No. 80-1496

Office-Supreme Court, U.S.
FILED
JUL 9 1981
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

UNDERWRITERS NATIONAL ASSURANCE COMPANY,
Petitioner,

vs.

NORTH CAROLINA LIFE AND ACCIDENT AND HEALTH INSURANCE GUARANTY ASSOCIATION, JOHN RANDOLPH INGRAM, COMMISSIONER OF INSURANCE OF THE STATE OF NORTH CAROLINA, AND HARLAN E. BOYLES, TREASURER OF THE STATE OF NORTH CAROLINA,
Respondents.

ON WRIT OF CERTIORARI TO THE NORTH CAROLINA COURT OF APPEALS

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MARCH 3, 1981.
CERTIORARI GRANTED MAY 18, 1981.
Central Publishing Company, Inc., Indianapolis, IN 46206

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20. Judgment of the Supreme Court of North Carolina, issued December 4, 1980	Pet. App. 1A-2A	

1.

Docket Entries In The North Carolina Courts Below

The following are the docket entries as they appear in the records of the North Carolina courts below.

NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE	
WAKE COUNTY	SUPERIOR COURT DIVISION	
NORTH CAROLINA LIFE AND ACCIDENT AND HEALTH INSURANCE GUARANTY ASSOCIATION,	)	
Plaintiff,	)	
v.	)	No. 78CVS174
UNDERWRITERS NATIONAL ASSURANCE COMPANY, JOHN RANDOLPH INGRAM, COMMISSIONER OF INSURANCE OF THE STATE OF NORTH CAROLINA, AND HARLAN E. BOYLES, TREASURER OF THE STATE OF NORTH CAROLINA,	)	
Defendants.	)	

[The original docket entries are in two columns entitled "Document Filed by PLAINTIFF" and "Document Filed by DEFENDANT." Entries in the original docket appear in chronological order within each column, rather than in the integrated chronological order displayed below.]

DATE	ITEM	COLUMN
1/12/78	Complaint	Plaintiff
2/13/78	Order of Service issued sheriff Wake served on Underwriters Nat. Assurance Co. served 2-13-78	Plaintiff
2/13/78	Order extending time to answer Complaint to & including 3-14-78	Plaintiff
2/13/78	Answer, Counterclaim & cross claim w/ cert. of Serv. against Underwriters Nat'l Assurance Co.	Defendant
3/14/78	Answer of National Assurance Co. w/ cert. of serv.	Defendant
3/14/78	Answer to Cross-Claim w/ cert. of Serv.	Defendant
4/14/78	Reply w/ cert. of Serv.	Plaintiff
1/30/79	Notice and Joint Motion for summary judgment w/ cert. of serv.	Plaintiff
1/30/79	Affidavit of Bobby W. Gray	Plaintiff
1/31/79	Notice w/ cert. of serv.	Plaintiff
3/12/79	Motion for Summary Judgment and Notice of hearing w/ cert. of serv.	Defendant
3/12/79	Affidavit of Charles T. Richardson w/ exhibits (see vault)	Defendant
3/14/79	Affidavit of David P. Phipps w/ cert. of serv.	Defendant
3/20/79	Courtroom Procedure	Plaintiff
4/2/79	Affidavit of William S. Patterson	Plaintiff
4/11/79	Order and dismissal of Underwriters counterclaim [The order of the North Carolina trial court	Plaintiff

	issued on April 11, 1979 appears at Pet. App. 19A-28A.]	
4/20/79	Notice of Appeal to Ct of Appeals by Deft Underwriters (UNAC) Nat'l w/ cert. of service	Defendant
4/20/79	Application for Enforcement of Judgment pending appeal	Defendant
4/23/79	Appeal Entries	Defendant
5/14/79	Stay of Enforcement of Judgment	Plaintiff
7/5/79	2nd proposed record on appeal	Defendant
7/13/79	Consent order extending time to settle record on appeal	Defendant
7/30/79	Stipulation	Defendant
8/2/79	Record on appeal (Exhibits to record on appeal in vault)	Plaintiff
9/24/80	Judgment & Opinion from the NC Court of Appeals; no error [The opinion of the North Carolina Court of Appeals issued on September 2, 1980, appears at Pet. App. 5A-16A.]	Defendant
10/6/80	Cert. of Satisfaction of Costs in Court of Appeals	Defendant
10/20/80	Notice that case has been certified to the Supreme Court	Defendant
12/8/80	Notice from Ct of Appeals; Supreme Court denied Petition for Review [The judgment of the Supreme Court of North Carolina issued on December 4, 1980, appears at Pet. App. 1A-2A.]	Defendant
5/28/81	Notice from Ct of Appeals; U.S. Supreme Court allow Certiorari	Defendant

NORTH CAROLINA COURT OF APPEALS

NORTH CAROLINA LIFE AND ACCIDENT AND HEALTH INSURANCE GUARANTY ASSOCIATION,	)	
v.	)	No. 7910SC766
UNDERWRITERS NATIONAL ASSURANCE COMPANY, JOHN RANDOLPH INGRAM, COMMISSIONER OF INSURANCE OF THE STATE OF NORTH CAROLINA, AND HARLAN E. BOYLES, TREASURER OF THE STATE OF NORTH CAROLINA.	)	

[The following entries are reproduced verbatim as they appear in the records of the court.]

Filed	8-22-79
Docketed	8-22-79
Argued	2-29-80
Opinion	9/2/80

[The opinion of the North Carolina Court of Appeals issued on September 2, 1980, appears at Pet. App. 5A-16A.]

Certification	9/22/80	
Satisfaction	10-2-80	
Appealed (Certiorari) (D.R.)		10-10-80
Certified to Supreme Court		10-16-80
Judgment & D.R. denied	Appeal dismissed 12-2-80	

[The judgment of the Supreme Court of North Carolina issued on December 4, 1980, appears at Pet. App. 1A-2A.]

Allowed by U.S. Supreme Court 5-18-81

* * *

Docket Fee	8-22-79
Record	8-22-79
Appellant's Brief	10-22-79
Appellee's Brief	12-3-79
Addendum (R) (B)	12-3-79
Other Briefs DRB	12-17-79
Exhibits	8-22-79

* * *

Motion Of	Date		Ruling	Date
Appellant	8-22-79	Motion	Allowed	8-23-79
Appellant	9-20-79	Motion		
Appellee	11-6-79	Motion	Allowed	11-7-79
Appellee	11-8-79	Motion	Allowed	11-8-79
Appellant	2-14-80	Motion Richardson	Allowed	2-15-80
Appellant	2-14-80	Motion Boehm	Allowed	2-19-80

* * *

TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

Fall Term 1980

NORTH CAROLINA LIFE AND ACCIDENT AND HEALTH INSURANCE GUARANTY ASSOCIATION,	)	
v.	)	No. 60PC
UNDERWRITERS NATIONAL ASSURANCE COMPANY, JOHN RANDOLPH INGRAM, COMMISSIONER OF INSURANCE OF THE STATE OF NORTH CAROLINA, AND HARLAN E. BOYLES, TREASURER OF THE STATE OF NORTH CAROLINA.	)	

[The following entries are reproduced verbatim as they appear in the records of the court.]

Docketed 6 October 1980
Notice of Appeal
10-15-80—Motion to Dismiss
12-2-80—Appeal Dismissed
Pet. for Discretionary Review
Under GS7A-31 10-15-80—Answer
10-15-80—Answer (AD)
12-2-80—Denied
[The judgment of the Supreme Court of North Carolina issued on December 4, 1980, appears at Pet. App. 1A-2A.]

2.

[Exhibit In The North Carolina Court of Justice, Superior Court Division, Wake County]

DEPARTMENT OF INSURANCE

State of North Carolina

P. O. Box 20307

RALEIGH, N. C. 27611

June 13, 1973

JOHN RANDOLPH INGRAM (919) 829-7343
COMMISSIONER OF INSURANCE

Mr. Ralph K. Lindop, President &
Chairman of the Board
Underwriters National Assurance Company
3637 North Meridian Street
Indianapolis, Indiana 46208

Re: Review of Operations and Financial Condition of Underwriters National Assurance Company

Dear Mr. Lindop:

This will confirm my telephone conversation with you of June 13, 1973 relative to the operations and financial condition of Underwriters National Assurance Company for the calendar year ending December 31, 1972.

As indicated to you by telephone, Commissioner Ingram has requested that you deposit for the sole benefit of North Carolina policyholders $100,000 in eligible securities in order that this Department may be in a position to issue the Company's license for the year July 1, 1973 through June 30, 1974.

As further indicated to you by telephone, please furnish this Department a letter setting forth corrective measures

which the Board of Directors and Officers of your Company are now taking to reduce the continuing drain on suprlus during 1973.

If you have not already done so, it is requested that the Company advise this Department as promptly as possible of its compliance with the above request. The Company should contact this Office within the next ten (10) days relative to eligible securities and the appropriate registration thereof prior to the submission of any securities.

Sincerely yours,

JOHN RANDOLPH INGRAM
Commissioner of Insurance

/s/ George E. King
Deputy Commissioner & Chief Examiner
Company Operations Division

3.

[Exhibit In The North Carolina Court of Justice, Superior Court Division, Wake County]

underwriters national assurance company
CORPORATE OFFICES: 3637 N. MERIDIAN ST., INDIANAPOLIS, INDIANA 46208

June 18, 1973

Mr. George E. King
Deputy Commissioner & Chief Examiner
Company Operations Division
North Carolina Department of Insurance
P. O. Box 26387
Raleigh, North Carolina 27611

Dear Mr. King:

Pursuant to your letter to me of June 1973 and our previous telephone conversation, I have asked our Treasurer, Mr. Bruce Bowers, to contact Mr. Bryant Tyndall of your Department regarding arrangements for transferring $100,000 deposit to your Department for the sole benefit of North Carolina policyholders. You, of course, indicated that this was a requirement for our license to be renewed for July 1, 1973.

We are well aware that there has been some drain of our surplus over the past 12 years of our company's existence. As you know, this is a natural phenomenon of any conventional life and health insurance company. I believe we have a fine company, and I am proud of our accomplishments in light of the limited surplus which we have used in attaining the position of being the second largest producer of non-cancellable accident and sickness loss-of-time insurance in the country. The information available which leads me to make such a statement is not complete, but I still believe the statement is accurate.

You will be happy to know that we have taken considerable steps to improve our statutory surplus situation. Primarily, we have committed ourselves to the opening of only one new agency in 1973. New agencies in 1974 will be similarly limited. (In the three years prior to 1973, we had opened a total of 25 new agencies.) Also we are engaged in an austerity program in which we are determined to "hold the line" on Home Office expenses. The first quarter's figures for this year gave us the first indication of our progress on this program, inasmuch as general expenses in the first quarter of 1973 were only 4% higher than general expenses in the first quarter of 1972, while income was up 60%. This was accomplished in light of the fact that salaries, one of our largest expense items, were up 5½% to 6% and in spite of the fact that we had installed new computer equipment in the latter part of 1972. We are confident that as a result of these programs there will be an improvement in our surplus position which now stands at over $3,000,000.

Sincerely,

/s/ Ralph K. Lindop
Chairman of the Board
President

RKL:kjw

4.

[Exhibit In The North Carolina Court of Justice, Superior Court Division, Wake County]

underwriters national assurance company
CORPORATE OFFICES: 3637 N. MERIDIAN ST., INDIANAPOLIS, INDIANA 46208

June 19, 1973

Mr. George E. King
Deputy Commissioner & Chief Examiner
Company Operations Division
North Carolina Department of Insurance
P. O. Box 26387
Raleigh, North Carolina 27611

Re: Deposit with North Carolina Insurance Department

Dear Mr. King:

In accordance with your request concerning renewal of license for Underwriters National Assurance Company and in accordance with my phone coversation with Mr. Bob Gray on June 19, UNAC has instructed its Custodial Bank to re-register and transfer the securities shown on the attached letter to the North Carolina Department of Insurance.

We understand that interest payments will be sent to the Treasurer of the State of North Carolina, with the checks made payable to the Treasurer of North Carolina and Underwriters National Assurance Company. We further understand that the Treasurer of the State of North Carolina will endorse the interest checks and remit them on a timely basis to Underwriters National Assurance Company.

Our auditors, Ernst & Ernst, each year confirm all securities owned by UNAC, and we understand that the auditors' confirmations are to be sent directly to you.

We believe all matters regarding this deposit have been covered. If, however, additional information is needed, we would appreciate hearing from you.

Sincerely,

/s/ Bruce B. Bowers
Vice President and
Treasurer

BBB/cs
cnc

5.

STATE OF INDIANA)		IN THE SUPERIOR COURT
) SS:		OF MARION COUNTY,
COUNTY OF MARION)		ROOM NO. 5

DEPARTMENT OF INSURANCE, STATE OF INDIANA,	)	
Petitioner,	)	
	)	CAUSE NO.
vs.	)	S574 851
UNDERWRITERS NATIONAL ASSURANCE COMPANY,	)	FILED August 5, 1974
Respondent.	)	

ORDER OF REHABILITATION

Comes now Petitioner, Department of Insurance of the State of Indiana, by Theodore L. Sendak as Attorney General of Indiana and files their Verified Application for Rehabilitation and Petition for Order to Show Cause in the following words and figures to wit:

(H.I.)

And appears Respondent by counsel and waives notice and waives hearing on Order to Show Cause and this proceeding being submitted to the Court on said Verified Application for Rehabilitation and Petition for Order to Show Cause and the Court being duly advised in the premises, now finds that the Department of Insurance of the State of Indiana should, by the appointment of LLOYD M. ALLEN, Commissioner of Insurance of the Department of Insurance of the State of Indiana as Rehabilitator, take possession of the business and assets of Underwriters National Assurance Company and conduct the business thereof and appoint such personnel as may be necessary to

rehabilitate Underwriters National Assurance Company as permitted by IC 1971 27-1-4-2 found at Burns' (1965 Repl) Section 39-3402(a) subject to the provisions of Clauses (b) and (c) thereof and the further order of this Court.

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED AND DECREED, by the Court that the Department of Insurance of the State of Indiana, by the appointment of Lloyd M. Allen, Commissioner of Insurance of the Department of Insurance of the State of Indiana as Rehabilitator take possession of the business and assets of Underwriters National Assurance Company and conduct thereof and appoint such personnel as may be necessary to rehabilitate Underwriters National Assurance Company.

/s/ Addison M. Dowling, Judge
Superior Court Room No. 5 of
Marion County

Dated: 8-5-74

6.

[In the Superior Court of Marion County, Indiana, Room No. 5]
[Title omitted in printing]

NOTICE TO POLICYHOLDERS

To: all persons who are or have at any time been holders of contracts of insurance with Underwriters National Assurance Company ("UNAC").

This notice is issued pursuant to Rule 23 of the Indiana Rules of Trial Procedure. If you are a member of the class of all policyholders who now hold or have held contracts of insurance with Underwriters National Assurance Company this notice may affect your legal rights. The Court has conditionally determined that the following named individuals represent the class: B. M. Honeycutt; T. J. Barconic; R. D. Fromme; J. E. Syman; T. E. Theiman; L. J. DeAngelis; J. F. Mannion; and Robert Schultz. Attorneys for the named policyholder representatives and the class of all policyholders are: Smith and Carponelli, 10 South LaSalle Street, Suite 444, Chicago, Illinois 60603 and Lewis, Wilson, Cowels, Lewis & Jones Ltd., 2054 North 14th Street, Arlington, Virginia 22216.

On August 5, 1974, UNAC was placed in rehabilitation by order of this Court and the Department of Insurance of the State of Indiana was appointed Rehabilitator. Since that date no new business has been written and no matured benefits under "Return of Premium Riders" have been paid, but other insurance benefits have been paid.

The named representatives of the policyholder class, all airline pilots who are holders of disability income policies, initially brought two independent class actions against UNAC. *Schultz v. UNAC* was filed on August 2, 1974, in the Circuit Court of Cook County, Chicago, Illinois, and was subsequently removed to the United States District Court

for the Northern District of Illinois. *Honeycutt, et al. v. UNAC* was filed on August 8, 1974, in the United States District Court for the Eastern District of Virginia. The complaints in those actions alleged that UNAC had misled the named policyholder representatives and other members of the class as to the overall economic conditions of the corporation and as to the extent these policies were actuarially sound. They further alleged that these misrepresentations were accomplished, among other means, by a vigorous advertising campaign and through letters to individual policyholders and that, as a result, the company was unjustly enriched. Both of these actions (along with other litigation based on the same or similar claims) have been stayed by order of the judge in the rehabilitation proceeding. The named class representatives thereafter filed petitions to intervene on behalf of themselves and the class in these rehabilitation proceedings. They have been conditionally determined to represent as intervenors, the class of all UNAC present and former policyholders.

Any judgment whether favorable or not which may be entered in this action will be binding upon each member of the intervening class who does not request exclusion pursuant to Rule 23(b)(3). Any class member who wishes to be excluded from the class may do so by filing with the Clerk of the Superior Court of Marion County, Room No. 5, Indianapolis, Indiana, a written request for exclusion which must be received by the Clerk on or before January 15, 1976. Any person so requesting exclusion will not participate in any recovery on behalf of the intervening class, and will not be bound by the results of the litigation, insofar as his status as a member of such class is concerned. As a policyholder, however, he may be bound by a judgment affecting policyholders, if any is entered, including any reorganization plan approved by the Court in the rehabilitation proceeding. Any policyholder, whether or not he requests exclusion, may as he desires,

enter an appearance through his own counsel. Each member of the class not requesting exclusion, whether or not he enters such an appearance will be bound by any judgment in this proceeding.

On September 22, 1975, a Status Report was filed with this Court including detailed financial and actuarial information developed by the Department of Insurance of the State of Indiana, as Rehabilitator of UNAC since August 4, 1974. The report is available for inspection in the files of this Court and copies may be obtained at a cost of $24.50 each from the Department of Insurance of the State of Indiana, Room 509, State Office Building, Indianapolis, Indiana 46204. In brief summary, it is the conclusion of the Rehabilitator that (a) UNAC's reserves for Return of Premium Rider (RPR) issued by UNAC were inadequate and (b) that UNAC's reserves as to disability income policies were also inadequate, apart from RPR aspects.

Pursuant to these rehabilitation proceedings two alternatives for the future of the company are available: (1) liquidation and distribution of the available assets; and (2) a reorganization and rehabilitation. It is the present hope of the Rehabilitator that the company can be reorganized and continue offering insurance to present policyholders and new policyholders in the future.

The Rehabilitator with the aid of independent actuaries and accountants, has developed a proposed plan of rehabilitation and has supplied it to policyholder class representatives and their attorneys, and to intervenors on behalf of a class of shareholders of UNAC International Corporation (UNAC's holding company) and their attorneys. The Rehabilitator hopes to secure the agreement of the representative parties to a plan and would then submit the plan to the Court for approval or disapproval with hopes to implement the plan with a minimum of delay and expense. However, there can be no assurance that this will be accomplished.

Effective September 30, 1975, the Rehabilitator has reserved all additional premiums charged for RPR benefits in a separate account and proposes to recommend to the Court that those additional premiums (but not the premiums for underlying coverage) be returned to the policyholders. The Rehabilitator also has under study the possibility and administrative feasibility of returning to RPR policyholders the additional premium charged for RPR benefits from August 5, 1974, to September 30, 1975. As of September 30, 1975, no commissions have been paid to agents as a result of RPR premiums. To the extent that any policyholder with an RPR on his policy wishes to discontinue paying the additional premium charged for RPR benefits, the Rehabilitator will not assert that the action prejudices in any way his right to underlying insurance benefits. It may, of course, reduce the total consideration to the policyholder on account of his RPR rights under any plan of rehabilitation ultimately approved by the Court.

It is the Rehabilitator's view that the principal goal of the rehabilitation process is to permit UNAC to become an ongoing, financially responsible insurer, in order to provide insurance benefits. To that end the Rehabilitator has concluded that (a) elimination of continued writing of Return of Premium Riders is necessary and that this company's liability for existing RPR benefits must be compromised at less than full face value, and (b) the benefits afforded under disability income policies in the past must be reduced or a premium for such benefits raised as to all persons except those who have already incurred claims.

The Rehabilitator and policyholder representatives have concluded that there may be valid claims for recovery of damages from UNAC's former management or advisers or others. Therefore, both the Rehabilitator and the policyholder representatives on behalf of the class of policyholders contemplate the institution of litigation to

assert whatever rights UNAC or the policyholders may have to receive damages for mismanagement, breach of contract, negligence or other rights of action. The proceeds of any recoveries would inure to the benefit of the policyholders and UNAC.

Negotiations with all representatives and parties concerned have been proceeding since August 4, 1974, and it is hoped that a final plan of reorganization will be arrived at in the near future. The details of a plan of rehabilitation will be made available to all policyholders and parties when filed with this Court.

On December 1, 1975, James A. Newpher, a policyholder of UNAC, filed a petition for intervention in the rehabilitation proceeding asserting that his interests are not represented by the named representatives of the policyholder class, stating that he does not desire to be represented by them, and requesting that an investigation be conducted of certain matters in the rehabilitation proceedings. The Department of Insurance of the State of Indiana, as Rehabilitator, has advised the Court that the matters raised in Mr. Newpher's petition have been discussed by the Rehabilitation with the policyholder class representatives and are under consideration. These include the treatment of RPR premiums described above and the method of advising the policyholders of the status of the rehabilitation. The Rehabilitator has also advised the Court that it has no objection to any investigation but does not believe the expense of additional independent consultants is warranted or should be borne by UNAC. The Department of Insurance, as Rehabilitator, takes the position that is has and will continue to administer the rehabilitation in the best interests of the policyholders. To that end the Department is attempting to restore the company to a condition in which it can operate successfully.

The entire Court file in this action is available for inspection by any class member or his or her counsel during

regular business hours in the Superior Court of Marion County, Room No. 5, Indianapolis, Indiana. Inquiries concerning this matter may also be directed to the above named attorneys for the policyholder class.

This notice should not be construed as an expression of the Court's opinion on the merits of any claims or of any defenses which may be raised in this action.

Michael T. Dugan, II
Judge, Marion County Superior
Court, Room No. 5

December 3, 1975

7.

[Notice In The Superior Court of Marion County, Indiana, Room No. 5]

STATE OF INDIANA SEAL INDIANAPOLIS 46204

THE DEPARTMENT OF INSURANCE
509 STATE OFFICE BUILDING

August 1976

To: Policyholders of Underwriters National Assurance Company

Previous notice to you advised that Underwriters National Assurance Company was placed in Rehabilitation on August 5, 1974, and the company has been under the jurisdiction of the Department of Insurance since that date.

The Department of Insurance submitted a Plan of Rehabilitation to the Court which has now been tentatively approved for distribution to UNAC policyholders and other interested persons, after an initial hearing on June 9, 1976, at which the policyowner class, among other parties, was represented by counsel. Along with the Plan we have included a data sheet which indicates exactly how the plan, as tentatively approved, would affect you individually.

The Court has set a hearing for October 14, 1976, at which time it will make a final decision on the plan to be implemented after it has heard any additional objections which are properly filed prior to September 14, 1976. The procedure for filing objections or intentions to be heard is spelled out in the enclosed "Notice of Hearing." I would encourage you to act promptly if you have suggestions which merit the Court's consideration.

No decision by you is necessary at this time as to which of the options in the Plan you desire. This decision will be yours to make subsequent to the October 14 court ruling. You will then be presented with the court-approved plan

and at that time be required to make your decision based on your individual desires.

H. P. Hudson
Commissioner

HPH: aw
Enclosures

[Title omitted in printing]

NOTICE OF HEARING

TO: All parties interested in Underwriters National Assurance Company ("UNAC"), including each UNAC policyowner, all managers, supervisors or agents of UNAC, all state insurance guaranty associations, all state insurance departments, any person who has appeared in this proceeding and any other creditor or party determined by UNAC or the Rehabilitator to have a claim or potential claim against UNAC

You are hereby notified that on October 14, 1976, at 9:00 A.M. in Room W-507, City-County Building, Indianapolis, Indiana, 46204, there will be a final hearing before Judge Michael T. Dugan II, Superior Court of Marion County, Indiana, Room No. 5, to consider proposed plans of rehabilitation for UNAC and settlement and compromise of all claims asserted on behalf of the class of policyowners of UNAC or the class of stockholders of UNAC International Corporation. Attached hereto is a copy of the Proposed Rehabilitation Plan for UNAC tentatively approved by the Rehabilitation Court on July 19, 1976, after an initial hearing at which parties, including representatives of certain classes described hereafter, presently represented by counsel or appearing on their own behalf had an opportunity to be heard.

At the final hearing, any interested parties may appear and be heard concerning the Proposed Rehabilitation Plan and settlement. Each person intending to object to the Proposed Rehabilitation Plan or to appear at the hearing must file a notice of such intention to object or to appear with the Court, at the above address, by September 14, 1976, together with a brief statement of any objections to the Proposed Rehabilitation Plan and any matters to be presented at the hearing. A copy of each paper filed must be served by mail on counsel for the Rehabilitator, Theodore R. Boehm, Baker & Daniels, 810 Fletcher Trust Building, Indianapolis, Indiana 46204.

For the possible effect of rehabilitation upon your rights, your attention is directed to the provisions of the Proposed Rehabilitation Plan enclosed. If your policy is a life insurance contract there is no change proposed in your coverage and no data sheet is enclosed. For all other policyowners, the enclosed data sheet constitutes a part of this notice and sets forth the specific amounts of any payments that would be due you under the Proposed Rehabilitation Plan and any changes that would be effected in your insurance benefits if the Proposed Rehabilitation Plan is approved after the final hearing without modification. The specific information on this data sheet regarding actual dollar amounts as related to your options under the Proposed Rehabilitation Plan is based on UNAC records as of the date of this notice. That information may vary substantially in any plan as ultimately approved. Changes may be required by Court modifications to the Proposed Rehabilitation Plan or by necessary adjustments to the underlying data. You are not now required to select any option. This data is for information only. This notice, with its enclosures, is meant only to advise you of the final hearing on the Proposed Rehabilitation Plan for UNAC and proposed settlement of class actions, and to advise you to the extent possible at this time, how the Proposed Rehabilitation Plan, if finally approved by the Court, would affect you as an interested party.

If you are a member of the policyowner or stockholder classes, you should know that class attorneys have been awarded preliminary attorneys' fees for legal services at the rate of $50.00 per hour for services rendered prior to May 27, 1976, in the aggregate amount of $40,800 for stockholder class counsel and $166,325 for policyowner class counsel, plus expenses. Said attorneys may petition for additional fees for services after May 27, 1976, upon approval of a final plan of rehabilitation.

The Proposed Rehabilitation Plan provides in part XIII that upon final approval of the Proposed Rehabilitation

Plan, all claims against UNAC by policyowners or others are compromised and dismissed and all persons are discharged from any liability for acts during the rehabilitation of UNAC.

By Order of the Court, dated July 19, 1976.

Date: _____

THE DEPARTMENT OF
INSURANCE OF THE
STATE OF INDIANA,
Rehabilitator of UNAC

8.

[In The Superior Court of Marion County, Indiana, Room No. 5]

[Title omitted in printing]

FILED OCTOBER 12, 1976

INFORMATION TO THE COURT AND PETITION FOR APPROVAL OF MAILING TO CERTAIN POLICYHOLDERS OF UNAC AND APPROVAL OF CONCEPT OF SERVICE CONTRACT BETWEEN GUARANTY ASSOCIATIONS AND UNAC

The eight state Guaranty Associations which are parties herein and represented by counsel of record may owe certain benefits to certain UNAC policyholders who qualify, depending upon the election such policyholder makes under the final Plan of Rehabilitation. In order to discharge their statutory obligations, the Guaranty Associations deem it necessary to inform the potential recipients of Guaranty Association benefits of their rights, in writing, and to do so contemporaneously with the mailings of the Rehabilitator to all policyholders concerning the election of options under any plan the Court finally approves. A copy of this correspondence which all eight Guaranty Associations herein have approved, and which they in turn submit to the Court, is attached hereto. The Guaranty Associations believe that this letter will clarify for certain policyholders that might be eligible for Guaranty Association benefits their rights with regard to the effect that any final Plan of Rehabilitation might have upon such rights.

The Guaranty Associations realize that by operation of the Plan of Rehabilitation there will be certain limitations against the rights of certain policyholders as they existed prior to such rehabilitation under contracts of insurance issued by UNAC, to-wit:

(1) Certain of such policyholders who have heretofore had noncancellable insurance policies which provide in

effect that there can be no increase of premium on their policy during the life of the policy, and said policies now have been changed by the Plan of Rehabilitation to guaranteed renewable policies in which there is a possibility and a probability that there will be an increase in premium.

(2) Certain of such policyholders are the owners of policies which have a return of premium rider which provides for the return of a certain portion of premium under conditions set out in said policies, and that all of said rights of continued effectiveness of any return of premium rider are terminated by the Plan of Rehabilitation; and both of said rights are guaranteed by the Guaranty Association under certain circumstances provided a policyholder qualifies. In order to meet their statutory obligations and guarantee such rights, the Guaranty Associations respectfully submit that it is for the best interests of the policyholders and in the interest of uniform handling and the avoidance of confusion in the servicing of certain policies existing between UNAC and its policyholders, that UNAC will continue as a rehabilitated company in the issuing and servicing of the basic coverage of policies heretofore issued by it with certain exceptions.

To this purpose, a service contract within the concept set out in the attached form, shall be entered into by both Guaranty Associations and UNAC with the approval by the Court as to its final form and terms.

WHEREFORE, the Guaranty Associations pray that the Court approve the proposed mailing to certain policyholders and further approve the concept of a service agreement between the individual Guaranty Associations and UNAC.

KIGHTLINGER YOUNG GRAY
& DE TRUDE,

by /s/ Donald L. Dawson
Attorneys for Guaranty Associations.

Fifth Draft of Letter to Policyholders
October 7, 1976

Dear *(Policyholder)*:

The Underwriters National Assurance Company (UNAC) Rehabilitation proceeding in the Superior Court of Marion County, Indiana is now concluded. The records of UNAC that have been made available to us indicate that you may be entitled to benefits from the _____ Guaranty Association, providing you qualify. In this regard, if you intend to claim benefits from this Guaranty Association, you must execute the enclosed "Affidavit Regarding Residency and Policy Information" and return same to this office. From the information contained therein it will be determined if you qualify for benefits. The Guaranty Association benefits, if any, that you may qualify for are as specified below.

A final plan for the rehabilitation of Underwriters National Assurance Company was approved by the Superior Court of Marion County, Indiana on _____. You were mailed a "Proposed Rehabilitation Plan for Underwriters National Assurance Company" in August of 1976. The options under the final plan are identical to those in such proposed plan.

You will, if you have not already, receive correspondence from the Department of Insurance of the State of Indiana instructing you how to make the required election under the final plan as approved by the Court. The option you elect under the plan can affect your right to benefit under the _____ (State Guaranty Association Act), provided you qualify for any such benefits in the first instance.

Irrespective of what option you elect under the plan approved by the Court, if you qualify for benefits, you will be entitled to receive from *(the particular state)* Guaranty

Association Return of Premium (RPR) benefits, provided the benefits matured under your policy between August 5, 1974 and (date that plan was approved by the Court).

If you choose to elect Option 1 under the plan and by so doing receive a liquidated cash value and terminate your policy, you will not be entitled to any benefits from any Guaranty Association.

If you hold a non-cancellable policy with Return of Premium rider and elect Option 2 and receive an "RPR" liquidated cash value and terminate the "PRP" rider but retain basic coverages, you may be entitled to benefits from the _____ Guaranty Association, but such benefits, if any, would be limited to the amount of any increased premium charge to you in the future for continued coverage on a guaranteed renewable basis.

If you hold a guaranteed renewable policy with Return of Premium rider and elect Option 2 and receive an "RPR" liquidated cash value and terminate the "RPR" rider but retain basic coverages, you will not be entitled to any benefits from any Guaranty Association.

If you do not choose to elect Option 1 or Option 2, or if you are not deemed to have elected Option 2 under the final plan, you have available to you a third alternative. To exercise this alternative, you must assign to the _____ Guaranty Association all your rights under the final rehabilitation plan. You may accomplish this by executing the enclosed "Assignment of Rights Under Rehabilitation Plan for Underwriters National Assurance Company" and returning same to this office along with the enclosed "Affidavit Regarding Residency and Policy Information." If you elect this alternative, provided you meet the residency requirements, the _____ Guaranty Association will guarantee the terms of your existing insurance policy. These guarantees, however, will be in lieu of any other cash payment, benefits, or rights that you might otherwise be entitled to under the plan of rehabilitation, by the election of Option 1 or Option 2.

If you elect the third alternative, you must do so by executing the enclosed Assignment and mailing it to the _____ Guaranty Association no later than midnight, the _____.

This letter is meant simply to inform you concerning the rehabilitation of UNAC as it might relate to your rights under the _____ Guaranty Association Act. You should not consider this letter in any way a recommendation to continue your policies with UNAC or any representation on the part of the Guaranty Association with respect to the solvency of UNAC or of its ability to continue to do business.

We welcome any inquiries, but to avoid any possible confusion in responding to same, all inquiries must be in writing and addressed to this Guaranty Association.

ROUGH DRAFT—UNAC CONTRACT WITH GUARANTY ASSOCIATIONS

SERVICE CONTRACT

THIS AGREEMENT entered into this ____ day of _____, 1976, by and between UNDERWRITERS NATIONAL ASSURANCE CORPORATION (hereafter referred to as UNAC) and the _____ (hereafter referred to as the Guaranty Association)

WITNESSES:

WHEREAS, UNAC is, under the jurisdiction of the Superior Court of Marion County, Room No. 5, now in the custody of the Insurance Commissioner of the State of Indiana under proceedings for rehabilitation; and

WHEREAS, a plan for rehabilitation has been finally approved by the Judge of Superior Court Room No. 5, providing for the rehabilitation of said company; and

WHEREAS, by said plan of rehabilitation the rights of certain policyholders as to protection of the policies issued by UNAC are limited or terminated; and

WHEREAS, the Guaranty Association pursuant to the law of its State, is required to offer certain protections to policyholders who qualify under the law of that State and to guarantee performance of certain of the contracts of insurance issued by UNAC to qualified residents of that State; and

WHEREAS, by the operation of the plan of rehabilitation there will be the following limitations against the rights of said policyholders as they existed prior to said rehabilitation under contracts of insurance issued by UNAC, to-wit:

1. Certain of said policyholders have heretofore had non-cancellable insurance policies which provide in effect that there can be no increase of premium on their

policy during the life of the policy and said policies now have been changed by the plan of rehabilitation to guaranteed renewable policies in which there is a possibility and a probability that there will be an increase in premium.

2. Certain of said policyholders are the owners of policies which have a Return Premium Rider which provides for the return of a certain portion of premium under conditions set out in said policies and that all of said rights of continued effectiveness of any Return Premium Rider are terminated by the plan of rehabilitation;

and both of said rights are guaranteed by the Guaranty Association which is party to this Agreement; and

WHEREAS, it is for the best interests of the policyholders and in the interest of uniform handling and the avoidance of confusion in the servicing of policies existing between UNAC and its policyholders; and

WHEREAS, UNAC will continue as a rehabilitated company in the servicing of the basic coverage of policies heretofore issued by it with the above exceptions;

IT IS, THEREFORE, AGREED BETWEEN THE PARTIES:

1. That UNAC will continue to service the policyholders in the same manner as it has previously done and that all billing for premiums and all collection of premiums and the payment of all claims arising under policies will be made by UNAC, except as hereafter set out.

2. That UNAC will maintain adequate data processing records in order to determine the status of all policyholders and to provide such information to the Guaranty Association to the extent required for the performance of their duties.

3. In the event that an increase in premium is achieved by UNAC for policyholders whose policies are guaranteed

by the Guaranty Association and which were previously non-cancellable policies, UNAC will keep a separate record of said increase and will bill the Guaranty Association for the increase on all policies which the Guaranty Association has certified to UNAC as being properly covered under the Guaranty Association Law.

UNAC will bill the policyholders at the guaranteed rate and will bill the Association for the increase in rate. The Guaranty Association will pay to UNAC the amount of such increase within thirty (30) days after the base premium is paid by the policyholder and UNAC will continue the basic coverages of the policy to the policyholder as if all of said premium had in fact been paid by the policyholder.

4. With regard to Return Premium Riders, if any policyholder desires to continue to carry and pay the premium for Return Premium Rider, UNAC will collect said premium from the policyholders who have been certified as eligible by the Guaranty Association and will hold said funds for the use and benefit of the Guaranty Association, making due accounting therefor monthly.

In the event of maturity of the Return Premium Rider as to any policyholder after the date of this contract, the benefits payable under the Return Premium Rider will be paid by UNAC as agent for this purpose and UNAC will provide the Guaranty Association with all statistical data necessary to determine the amount and eligibility of the claimant to Return Premium Rider benefits and the Guaranty Association will reimburse UNAC within 30 days of notice. For this purpose UNAC will submit for approval a settlement procedure manual for verification and payment of these benefits.

5. Inasmuch as the plan for rehabilitation provides for the exercise of certain options by policyholders and inasmuch as the Guaranty Association will require assignment to the Guaranty Association by assureds whose rights are protected by said Association of all of their rights

under the plan, UNAC undertakes to recognize said assignment and to make payments of the funds and amounts payable to such policyholders under the plan to the Guaranty Association pursuant to said assignment and the Guaranty Association will hold said funds for the purpose of honoring its obligations under the Return Premium Riders which may have matured between August 4, 1974 and the date of this Agreement and which may hereafter mature upon continued payment of premium by the policyholders.

6. In return for its services as set out in this contract UNAC will be paid by the Guaranty Association a fee to be determined on the basis of a determination of the cost of rendering said service.

7. All funds due to the Association and collected by UNAC shall be remitted directly to the Association at such office and address as the Guaranty Association shall from time to time direct and all funds due to UNAC from the Guaranty Association shall be paid directly to the managers of UNAC by said Association within thirty (30) days after receiving invoice therefor.

8. The Association shall be entitled to require an audit at its expense at any reasonable time to review all payments and receipts contemplated by this contract.

9. No agents commission shall be paid or charged on any amount collected for or paid by the Association.

10. The parties consider that payments by the Association of the amounts representing difference between basic guaranteed premium and the new premium are not premium but are a fee paid by the Association to UNAC to induce UNAC to continue the policy without increase of premium.

11. Monies paid by the policyholder to preserve his rights under the Return Premium Rider are not a premium for coverage but are a deposit to preserve the rights of the

policyholder under the Guaranty Association statute and the Association is not an insurer but is a guarantor only.

12. If any premium tax is charged by any state on any payment made by or to the Association under this contract, the Association will hold UNAC harmless and reimburse said expense.

13. This Agreement shall be binding on the parties and their successors and assigns, including any succeeding management of UNAC.

14. The parties contemplate that this contract shall remain in force so long as the liability of the Association continues and UNAC remains in business. However, the parties may terminate the contract by mutual agreement or either party shall be entitled to require termination with six (6) months notice to the other in writing.

9.

STATE OF INDIANA)		IN THE SUPERIOR COURT
) SS:		OF MARION COUNTY,
COUNTY OF MARION)		ROOM NO. 5
DEPARTMENT OF INSURANCE, STATE OF INDIANA,	)	
Petitioner,	)	
	)	CAUSE NO.
vs.	)	S574-851
UNDERWRITERS NATIONAL ASSURANCE COMPANY,	)	
Respondent.	)	

ORDER AND MEMORANDUM APPROVING PLAN OF REHABILITATION AND SETTLEMENT OF CLAIMS AND LITIGATION

This cause comes before the Court for final consideration of the Proposed Rehabilitation Plan for Underwriters National Assurance Company ("UNAC") which was tentatively approved by the Court on July 19, 1976, for final consideration of all other proposals concerning, or objections to, the tentative plan and for final consideration of the settlement of all claims and litigation involved in this rehabilitation proceeding.

Pursuant to the Order Concerning Procedure To Be Followed in Considering Rehabilitation Plans, dated March 19, 1976, and pursuant to notice sent to all parties who have appeared by counsel in this proceeding, the Court on June 9, 1976, heard evidence and argument concerning the various plans and proposals for rehabilitating UNAC. After the hearing, the Court on July 19, 1976, entered its Order Approving Tentative Plan of Rehabilitation and

Settlement of Class Action Claims, tentatively approving a plan of rehabilitation for UNAC and setting forth the procedures to be followed in mailing the tentative plan and the notice of the final hearing to all interested parties. On July 30, 1976, the Court entered an additional Order concerning those procedures. As set forth in the Certificate of Compliance with Orders Concerning Mailing of Tentative Plan of Rehabilitation, filed by the Rehabilitator on October 12, 1976 UNAC has complied with the Court's Orders of July 19, 1976, and July 30, 1976.

On October 14, 1976, and October 20, 1976, the Court heard additional evidence and argument relating to the tentative plan and the various plans, proposals and objections concerning the rehabilitation of UNAC. The Court has also received numerous letters and comments from persons interested in the affairs of UNAC, principally policyowners, concerning the tentative plan and the effect of rehabilitation upon individual rights. The numerous parties to this rehabilitation proceeding have filed various stipulations, briefs, arguments, and suggestions.

Having considered the evidence, arguments, pleadings, correspondence, proposals and all other matters presented to the Court in this lengthy rehabilitation proceeding, the Court makes the following findings:

1. The Court has jurisdiction over the subject matter and over the parties, including UNAC, UNAC International Corporation, all UNAC policyowners, creditors, agents, brokers or managers, state insurance guaranty associations, and shareholders of UNAC International Corporation.

2. The Plan of Rehabilitation for Underwriters National Assurance Company ("Plan") in the form attached hereto as Exhibit A is equitable and treats fairly each class of policyowners. The Plan makes adequate provision for the rights and interests of policyowners, creditors, agents and stockholders and the other persons interested in the affairs of UNAC.

3. The Plan is approved by the Court is the most feasible program for correcting or removing the causes and conditions which made the UNAC rehabilitation proceeding necessary and for restoring UNAC to viable financial status. The Plan accomplishes the purposes of the rehabilitation proceeding and complies with the Indiana Insurance Laws, including IC 27-1-4-2.

4. The Court has thoroughly considered all claims, objections and proposals filed by the various parties herein. To the extent that any such claim, objection or proposal is inconsistent with the Plan, the Court finds that the claim, objection or proposal should be overruled and relief to that extent denied.

5. The Court finds that the mailing of the tentative plan and Notice of Hearing, as evidenced by the Certificate of Compliance with Orders Concerning Mailing of Tentative Plan of Rehabilitation, filed by the Rehabilitator on October 12, 1976, constitutes the best notice practicable under all of the circumstances and requirements of due process of the proposed rehabilitation of UNAC and of the rights and duties of the interested parties with respect thereto.

6. Since the Order of Rehabilitation was entered on August 5, 1974, the Indiana Department of Insurance, as Rehabilitator of UNAC, has acted pursuant to the Orders of this Court within the applicable statutes. Although objections have been filed, no evidence of any sort has been offered which suggests that the Rehabilitator or its agents or employees acted in any way inconsistent with statutory or common law duties. Moreover, the evidence failed to show any grounds for not discharging the Rehabilitator and its agents and employees from liability for their acts incident to the rehabilitation of UNAC. Such a discharge is in addition to the statutory immunity of the Department pursuant to IC 27-1-3-1 and IC 34-4-16.5-3. However, a discharge will beneficially affect the carrying out of the

Plan by eliminating the assertion of contingent claims to indemnity rights and the assertion of other claims and allegations that may deter the employment of management for the rehabilitation of the Plan.

Further, the Plan, after due hearing, adjudicates and discharges all pending claims, and assertions as they relate to the Rehabilitator or the process of rehabilitation.

7. The Voting Trust and Depositary Agreement in the form attached hereto as Exhibit B is the most appropriate method presented to the Court for implementing part VIII(A) of the Plan, and should be approved by the Court.

It is, therefore,

ORDERED, ADJUDGED AND DECREED:

(1) The Plan is hereby adopted and approved in the form attached hereto as Exhibit A.

(2) The Voting Trust and Depositary Agreement is hereby approved in the form attached hereto as Exhibit B.

(3) To the extent that any claim, objection or proposal which was or could have been presented in this rehabilitation proceeding is inconsistent with the Plan, that claim, objection or proposal is overruled and relief to that extent denied. Without limiting the generality of the preceding sentence, all claims or litigation by any past or present UNAC policyowners, UNAC International Corporation, UNAC agents, brokers or managers, UNAC officers and directors, UNAC creditors, and shareholders of UNAC International Corporation against UNAC or the Rehabilitator, except as provided in the Plan, are hereby compromised, settled and dismissed.

(4) UNAC is directed, after termination of this rehabilitation proceeding (a) to cause the Plan, a data sheet concerning the exercise of individual policyowner options, a cover letter from UNAC or the Rehabilitator and this Order to be printed or otherwise reproduced and mailed to each of the persons who received the mailing directed by

the Court's Orders of July 19, 1976, and July 30, 1976; (b) to pay the printing and mailing at UNAC's expense; and (c) to file or cause to be filed with the Court a Certificate of Compliance identifying the parties to whom the Plan, the data sheet, the cover letter and this Order were mailed and stating the amount of costs incurred in connection with printing and mailing.

(5) UNAC and the Rehabilitator are authorized and directed to do all acts necessary or appropriate to cause to be implemented the provisions of the Plan and the Voting Trust and Depositary Agreement subject to the approval of the Court. To the extent that any provision of the Plan cannot be fully implemented because of the lack of approval of regulatory authorities in Canada or the United Kingdom, UNAC and the Rehabilitator are authorized and directed to implement the provision to the extent possible at the time of termination of this rehabilitation proceeding. Without limiting the generality of the preceding sentence, UNAC is authorized and directed to make distributions under the Plan of liquidated cash values, after termination of this rehabilitation proceeding, based upon calculations which exclude from the assets of UNAC the fair market value in exchange dollars of assets on deposit in Canada and the United Kingdom. If UNAC believes that such distributions to policyowners in the United States or in Canada or in the United Kingdom should not be made until approval of regulatory authorities in Canada or the United Kingdom or until other provision is made for policies of Canadian or United Kingdom policyowners, then UNAC shall petition the Court for authority to delay such distributions.

(6) All parties of interest are directed to nominate to the Court within 30 days names and biographical data of nominees to serve under the Voting Trust and Depositary Agreement.

(7) Following approval by the Court of from five to eleven Trustees, the names of the persons so approved and selected shall be published. UNAC International Corporation, the policyowner class representatives and the Trustees are directed to execute the Voting Trust and Depositary Agreement promptly thereafter. Within 30 days after execution the Trustees shall meet and elect the Board of Directors of UNAC. Upon election by the Board, the President and Secretary of UNAC shall immediately thereafter execute the Voting Trust and Depositary Agreement on behalf of UNAC. However, the Voting Trust and Depositary Agreement shall be a binding obligation of UNAC from the date of this Order.

(8) UNAC International Corporation is directed to do all acts and things necessary or appropriate to cause to be carried out its obligations under the Plan and the Voting Trust and Depositary Agreement, including, but not limited to, surrender and transfer of its certificate or certificates for all shares of UNAC stock to the Depositary in exchange for voting trusts certificates.

(9) The policyowner class representatives are directed to do all acts and things necessary or appropriate to cause to be carried out their obligations under the Plan and the Voting Trust and Depositary Agreement.

(10) This Order is final as to all matters occurring prior to the date of this Order. The Court shall retain jurisdiction over the parties and over this rehabilitation proceeding on petition of any interested party or the Indiana Department of Insurance (a) to resolve all questions as to interpretation and implementation of the Plan and as to the application of the Plan to specific facts and circumstances and (b) to modify, amend or supplement the Plan in any respect in the light of future developments. The Court shall also retain jurisdiction over the parties and over this rehabilitation proceeding during the implementation of the Plan to the extent necessary or appropriate to assure compliance with

the provisions of the Plan and the Voting Trust and Depositary Agreement and to resolve all questions in that respect. The Rehabilitator (and after termination of this proceeding, the Indiana Department of Insurance), with the approval of the Court, insofar as it does not materially and adversely affect the interests of the policyowners, shall supply any defects or omissions or reconcile any inconsistency in the Plan in such a manner and to such extent as may be necessary or appropriate to carry out the Plan. The Rehabilitator, Trustees and the Indiana Department of Insurance are authorized and directed to bring to the attention of the Court all matters coming to the attention of the Rehabilitator or the Indiana Department of Insurance which, in the judgment of the Rehabilitator, Trustees or the Indiana Department of Insurance, require or warrant the exercise by the Court of the continuing jurisdiction hereby retained.

(11) Counsel for the policyowner class and stockholder class shall submit to the Court, to UNAC and to the Rehabilitator sworn statements of the dates, nature of services and time expended in connection with this rehabilitation proceeding since April 1, 1976. Such sworn statements shall not include services and time expended in any other proceeding of matter, specifically including, but not limited to, the litigation now pending in the Hamilton Superior Court that has been the subject of previous fee petitions in this proceeding. To the extent that the time included in any such sworn statement is approved by order of this Court, UNAC is authorized and directed to compensate the counsel submitting such statement at the rate of Fifty Dollars ($50) per hour for such time. UNAC is also directed to pay all legal fees and expenses and expenses heretofore and hereafter incurred by the Rehabilitator, UNAC, or the Indiana Department of Insurance in connection with this rehabilitation proceeding, including any fees for services rendered in the implementation of this Order, whether prior to or subsequent to the termination of

this proceeding. "UNAC is also directed to pay all expenses heretofore and hereafter issued by the policyowners and stockholder class counsel for services rendered in the implementation of this Order, whether prior to or subsequent to the termination of this proceeding."

(12) Upon election of the Board of Directors of UNAC as directed in paragraph (7), UNAC shall be released from rehabilitation, and UNAC shall be permitted to resume possession of its property and the conduct of its business pursuant to IC 27-1-4-2, and this rehabilitation proceeding shall be terminated, subject, however, to the continuing jurisdiction retained by the Court. Upon such termination the Rehabilitator shall no longer serve in such capacity, and the Indiana Department of Insurance shall have the same relationship to UNAC as to any other insurance company organized under the laws of this State, except as specifically provided in the Plan. The right of the Indiana Department of Insurance pursuant to part VIII of the Plan to maintain a representative at UNAC's office after termination of this proceeding shall not any duty or obligation of the Department or any officer, agent or employee thereof to the State of Indiana or any other entity or person that does not exist apart from that provision of the Plan.

(13) The Indiana Department of Insurance and all of its present and former Commissioners, officers, agents and employees are hereby discharged from any and all liability for their acts incident to the rehabilitation of UNAC prior to the date of this Order. Upon the election of the Board of Directors of UNAC as directed in paragraph (7) the Rehabilitator may apply to the Court for a supplemental discharge from any and all liability for acts incident to the rehabilitation of UNAC after the date of this Order but prior to the election of the Board of Directors. Nothing in this Order shall affect any defense the Indiana Department of Insurance or any officer, agent or employee thereof may have, based on sovereign immunity or any other ground, to

any claim or contention relating to any act prior to, during or after this proceeding.

(14) Each party to this proceeding shall bear its or his own costs except as specifically set forth in paragraph (11).

/s/ Michael T. Dugan, II, Judge
Superior Court No. 5, of
Marion County

DATE: November 22, 1976

IN THE SUPERIOR COURT
OF MARION COUNTY,
ROOM NUMBER FIVE.
CAUSE NO. S 574-851

DEPARTMENT OF INSURANCE STATE OF INDIANA,	)	
Petitioner,	)	
VS.	)	MEMORANDUM
UNDERWRITERS NATIONAL ASSURANCE COMPANY,	)	
Respondent.	)	

I. STATEMENT OF FACTS

UNAC is a class I capital stock Indiana Insurance Company meaning it is authorized and licensed under the Indiana Insurance Code of 1935 (Acts 1935, Ch. 152, Sec. 59 Burn's Ind. Stats. Ann. §27-1-2-1) to write life, disability and health and accident insurance. UNAC International is an Indiana holding company operating under the Indiana Insurance holding company statute and regulations (Burn's Ind. Stats. Ann. §27-1-23-1) and owning all the issued and outstanding shares of UNAC. UNAC was incorporated in 1961 and has outstanding capital stock of 971.079 shares, (all one class) with a par value of $1.50 per share, amounting in dollars to a paid in capital of $1,456,518.50 (1974 Annual Report.).

UNAC International was incorporated in 1970 and has 1,254,505 shares of stock, all common, issued and outstanding and owned by 2,033 shareholders (As of September 5, 1975).

In 1974, the Department of Insurance caused its examiners to make an examination of UNAC's 1973

Annual Report of financial conditions and affairs, particularly with respect to its reserve for payment of claims and the return of Premium Rider Reserve. This report concluded that such reserves were inadequate and that if such reserves were not made adequate by the company, its capital and surplus accounts would be impaired, which would authorize the Department to take action under Burn's Ind. Stat. Ann. §27-1-3-19. The Department, thereupon, through the Attorney General of Indiana, filed suit on August 5, 1974, asking for "rehabilitation" under said §27-1-13-19.

On August 5, 1974, in response to the Department of Insurance' petition for rehabilitation this Court (Marion County Superior Court Room Five) ordered the Department of Insurance of the State of Indiana "to take possession of the business and assets of UNAC and conduct the business thereof and appoint such personnel as may be necessary to rehabilitate UNAC as permitted by Burns' Ind. Stats. Ann §27-1-4-2."

The following entries represent a chronology of the events which have occured subsequent to the order of rehabilitation of August 5, 1974:

September 16, 1974, the Court issued a "blanket" injunction which enjoined the commencement or prosecution of any suit, action, or other proceeding on behalf of, in the name of, or against UNAC or the Rehabilitator. The order made specific reference to the *B. M. Honeycutt et. al. vs. UNAC* action filed August 8, 1974 in the U.S. District Court for the eastern district of Virginia, and the *Robert Schultz vs. UNAC* action filed August 2, 1974 in the Circuit Court of Cook County, Illinois. The order enjoined the taking of any further action with respect to those two pending actions. Said injunction also ordered that all persons desirous of instituting or prosecuting any action or proceeding should do so as part of the rehabilitation proceeding or, in the alternative, to seek leave of "this" Court to do so elsewhere.

September 26, 1974, Robert Schultz on behalf of all UNAC policyholders with RPR provisions in their policies of insurance petitioned to intervene in the rehabilitation proceedings.

January 9, 1975, B. M. Honeycutt's petition to intervene on behalf of himself and all other persons who purchased PRR policies from UNAC was granted by court order.

January 23, 1975, The Airline Pilots Insurance Agency, Inc. motion for leave to intervene was granted by court order. The Airline Pilots Insurance Agency, Inc. is a Florida corporation which was formed exclusively for the purpose of soliciting and procuring the sale of insurance policies with PRR provisions. Said Insurance Agency did so on its capacity as the health assurance underwriter for UNAC.

June 18, 1975, UNAC International was granted leave to intervene in the rehabilitation proceedings by court order.

July 15, 1975, Richard C. Lindop, Ralph K. Lindop, Eilliam Aarmelin, Alfred Trafford, Samuel A. Croland, Michael C. Bernstein and Robert Osler petition for leave to intervene on behalf of themselves and as representative parties of a "class" comprised of all the shareholders of UNAC International capital stock, UNAC International being the holding company and parent of UNAC.

September 15, 1975, Court order designating the aforementioned persons as representative parties of all the shareholders' of UNAC International and authorizing the same to maintain a class action on behalf of all the shareholders on UNAC International was entered.

October 30, 1975, Court order entered declaring that the *B. M. Honeycutt et al. vs. UNAC* action be maintained as a class action pursuant to Indiana TR 23 for the benefit of the class of "all policyholders who hold now or have held contracts of insurance with UNAC".

December 1, 1975, James A. Newpher filed a petition for leave to intervene in his own behalf.

February 24, 1976, Newpher by written motion moves the Court to convert his intervening petition into a class action.

December 2, 1975, The Department of Insurance of the State of Indiana ex. rel. UNAC, Robert Schultz and B. M. Honeycutt, et. al. petitions the Court for leave to file suit against certain officers and directors of UNAC.

December 2, 1975, the Department in its representative capacity as Rehabilitator of UNAC files suit against certain officers and directors of UNAC in Marion County Superior Court Room Number Five.

December 12, 1975, the Court grants a motion for change of venue in the action by the Department against the officers and directors and by agreement of the parties dated December 15, 1975, the matter is transferred to the Superior Court of Hamilton County.

January 1, 1976, Cal-Lind Funding Corporation files a petition for leave to intervene in the rehabilitation proceedings.

March 8, 1976, the Court grants the Cal-Lind petition.

March 18, 1976, Cal-Lind files a complaint against UNAC.

June 8, 1976, a motion to intervene is filed by certain State Guaranty Associations and is granted by court order on June 11, 1976.

February 6, 1976, The Department of Insurance as Rehabilitator submits a summary of a proposed plan of rehabilitation.

March 6, 1976, the Court orders "all parties presently represented in the rehabilitation proceeding and Guaranty Reserve Life Insurance Company" to file any alternative rehabilitation plans for UNAC or to file any objections to the Rehabilitator's proposed Rehabilitation Plan for UNAC on or before April 16, 1976. The Rehabilitator is

directed by said order to file and modifications to his February 6, 1976, proposed plan on or before April 23, 1976. The order sets June 9, 1976, as the date for an initial hearing on the respective merits of the proposed plans.

April 23, 1976, the Department of Rehabilitation files an amended plan of rehabilitation.

June 9, 1976, a hearing on the evidence is held.

June 19, 1976, the Court tentatively approves the Rehabilitator's proposed plan of April 23, 1976, as the proposed plan for the rehabilitation of UNAC. The Court in said July 19, 1976 order sets October 14, 1976, as the date for the final hearing on the tentative plan.

October 14, 1976, the Court convenes the final hearing on the evidence. All evidence is complied by October 20, 1976 when evidence is heard concerning the Cal-Lind claim. October 29, 1976 is set as the final date for the post-trial briefs and the case is taken under advisement until November 22, 1976.

The following entries represent those interested parties who have submitted either an alternative plan to the tentatively adopted plan of April 23, 1976, or those interested parties who have submitted objections to the April 23, 1976 Proposed Plan for the Rehabilitation of UNAC. (note: the objections and alternative plans for the most part refer to the February 6, 1976 proposed plan which was amended in minor part by the April 23, 1976 plan and then, tentatively approved by the Court on July 19, 1976.)

1. The class of shareholders of UNAC International submitted a proposed plan of rehabilitation on December 5, 1975. On February 23, 1976, this same representative class submitted a pleading titled "Objections and Proposed Amendments to the Proposed Plan of Rehabilitation filed by the Department of Insurance on February 6, 1976." On April 15, 1976, the class of shareholders submitted an

addendum to their proposed plan of rehabilitation of December 5, 1975.

2. By letter of February 13, 1976, the New Hampshire Department of Insurance submitted a proposal suggesting a way to resolve the State Guaranty Association—third party claim dilemma.

3. April 12, 1976, H. Nelson Brown, Jr., Guy T. Connelly, Robert I. Cummin, Lloyd P. Grissom, William Harmelin, W. Foster Montgomery, Richard Moser, Selden Sheffield, Alred H. Trafford and Herman L. Trautman (the aforementioned persons are defendants in the Hamilton County action) file objections to the Rehabilitation plan of February 6, 1976.

4. April 14, 1976, Bruce Bowers and Carl J. Rennekamp (defendants in the Hamilton County action) file objections to the Rehabilitator's proposed plan dated February 6, 1976.

5. April 15, 1976, Ralph K. Lindop and Richard Lindop (defendants in the Hamilton County action) file objections to Rehabilitator's proposed plan of February 6, 1976.

6. September 14, 1976, H. Nelson Brown, Jr., Guy T. Connelly et al (defendants in the Hamilton County action) file objections to the proposed rehabilitation plan tentatively approved on July 19, 1976.

7. April 14, 1976, the class of policyholders represented by B. M. Honeycutt, et. al. file objections to the Rehabilitator's proposed plan.

8. April 15, 1976, Guarantee Reserve Life Insurance company files objections to the Rehabilitator's proposed plan.

9. June 9, 1972 [sic], Guarantee Life submits a brief in support of it's April 15, 1976 objections to the Rehabilitator's proposed plan.

10. July 13, 1976, Guarantee Life submits a brief in reply to the opposition brief of the Rehabilitator.

11. April 15, 1976, Cal-Lind Funding Corporation file objections to the Rehabilitator's proposed plan.

12. April 19, 1976, Samuel J. Furlin, policyholder, filed objection to the Rehabilitator's proposed plan.

13. June 8, 1976, Indiana National Bank, as a secured creditor of UNAC International, files objections to the Rehabilitator's proposed plan and a request to be heard at the final hearing on said plan.

II. JURISDICTION

The statutory basis for the Court's power to alter the terms of the existing policies, affect the rights of creditors, shareholders and agents, and bind nonconsenting parties, flows from the Indiana insurance rehabilitation statute, IC 27-1-4-2, Burns §39-3402:

> (a) An order to rehabilitate a domestic insurance company shall direct the department to take possesion of the property of such insurance company and to conduct the business thereof and/or to take such steps toward the removal of the causes and conditions which have made such proceedings necessary as the court shall direct.
>
> (b) At any time the department shall deem that further efforts to rehabilitate such insurance company would be futile, it may apply to the court under this article [§§ 39-3401—39-3430] for an order of liquidation.
>
> (c) The department, or any interested person, upon due notice to the department, at any time, may apply for an order terminating this proceeding and permitting such insurance company to resume possession of its property and the conduct of its business, but, no such order shall be granted except when, after a full hearing, the Court shall determine that the purposes of the rehabilitation proceeding have been accomplished."

While the other sections of the statute spell out in some detail the procedures to be followed in liquidating a distressed insurance company, there is no corresponding specificity concerning rehabilitation.

The Indiana rehabilitation statute directs the Department of Insurance as a Rehabilitator of a distressed insurance company "to take such steps toward the removal of the causes and conditions which have made such [rehabilitation] proceedings necessary as the court shall direct." IC 27-1-4-2(a), Burns §39-3402(a)

That once a Court in a rehabilitation or liquidation proceeding acquires jurisdiction that such jurisdiction vests in such a court to the exclusion of all other courts. The rule is that when a court of competent jurisdiction has taken possession of property through its officers, that property is withdrawn from the jurisdiction of all other courts, which, although having concurrent jurisdiction, may not disturb that possession. The court which originally acquires jurisdiction is competent to hear and determine all questions respecting title, possession and control of the property. This rule applies, even though the court, through its receiver, has not secured actual physical possession of the property of the debtor. *Genecou vs. Wine* (1940) 109 F. 2°265; *American Cast Iron Pipe vs. Statesman Ins. Co.* (1972), 343 Supp. 860.

Courts regularly provide full faith and credit to rehabilitation proceedings in other jurisdictions. *Hutchins vs. Pacific Mutual Life Insurance Co. of California*, (1938) 97 F2° 58, is an example. Hutchins involved a suit by a shareholder of the then reorganized insurance company seeking to set aside the earlier entered rehabilitation plan alleging that it was the product of a conspiracy between the rehabilitator and the new company's directors. The Court, after noting that the Rehabilitator acts as a trustee for the benefit of all creditors and interested parties, stated at page 60 of the text of the opinion:

> "Having acquired possession of the res by appropriate action, the state court drew to itself the power to determine, subject to review on appeal or certiorari, all questions germane to the proceeding. (court had earlier pointed out that under statute the State court had assumed jurisdiction over the business and assets of the insurance company) as said in *Lion Bonding and Surety Company vs. Karatz*, supra, (page 486) 'If the legality of the state court's action was to be questioned, it could be done only by laying the proper foundation through appropriate proceedings in that court'. The way was open to appellant, by intervention in the State court, to be heard on all matters sought to be litigated here. These questions have been as effectively withdrawn from the jurisdiction of the lower federal courts as has the property of the insurance company itself."

Podway vs. Pacific Mutual Life Insurance Co. of California (1940) 42 F.Supp. 569, is a 7th Circuit Case which is applicable. *Podway* involved a plaintiff as a holder of two noncancellable disability policies who was represented and protected through class representation in California proceedings, resulting in orders made by the Superior Court of Los Angeles County approving the rehabilitation and reinsurance plan and directing the insurance commissioner to transfer and assign the incurer's assets to the new company.

Full faith and credit was required to be given to those orders by the federal district court in Wisconsin and the plaintiff who took no action to accept or reject the reinsurance and assumption of policies by the new company in accordance with the terms of the plan was bound by the California proceedings even though he did not personally appear. The court in so holding observed that the California proceedings were valid and constitutional in that there was jurisdiction and procedural due process had been met, ie., notice and opportunity to be heard had been given to all interested parties. The plaintiff even though not

present had been represented in said proceedings through virtual or class representation and thusly full faith and credit was given to the orders and judgement of the California courts.

The Rehabilitation Court is bound to insure that the provisions of the Plan of Rehabilitation are carried out. The Court is also bound to insure that the spirit of the plan as it relates to the successful rehabilitation of the company is followed.

Where the insurance company makes an application for an order to terminate the conservatorship it must show that the grounds on which the company was taken over by the insurance commissioner have been removed, and the burden of proof in this respect, as well as the burden of proving that the company can properly resume title and possession is on the company. Whether the present circumstances justify termination of the concervatorship is a matter within the sound discretion of the trial court. The determination of the trial court on competent testimony without abuse of discretion that the control of the business of the insurance company should be returned to the company by the conservator is binding in the courts review. *(Caminetti vs. Prudence Mut. Life* 146 P2°15)

In *Caminetti vs. Imperial Mut Life* 139 P 2° 681 (1943), the Court noted (at page 690)

> "This (conservatorship or rehabilitation) being a special proceeding, the jurisdiction of the Court is limited by the terms and conditions of the statute under which the proceeding is instituted....There was but one question before the court and that one was as to the right of appellant commissioner to operate respondent's insurance business, or whether the control and operation of such business should be withdrawn from the commissioner and restored to respondent. When by its judgement the court decided this issue in favor of respondent, it completely and effectively exhausted the court's jurisdiction.

I.C. 27-1-4-2(c)

"The department, or any interested person, upon due notice to the department, at any time, may apply for an order terminating this proceeding and permitting such insurance company to resume possession of its property and the conduct of its business, but, no such order shall be granted except when, after a full hearing, the Court shall determine that the purpose of the rehabilitation proceeding have been accomplished."

/s/ Michael T. Dugan, II, Judge
Marion Superior Court, No. 5

Dated: November 22, 1976

PLAN OF REHABILITATION
FOR
UNDERWRITERS NATIONAL ASSURANCE COMPANY ("UNAC")

I. *Summary of the Rehabilitation Plan.*

A. *Basic Coverage.* All policyowners will be offered continuation of basic coverage subject to the changes specified in Part III. It is anticipated that premium increases will be necessary on accident and health and disability policies in the future, including those noncancellable policies modified to be guaranteed renewable. No change is anticipated on life insurance policies.

B. *Return of Premium Rider ("RPR") Benefits.* All RPR benefits will be terminated. RPR premiums received by UNAC on or after August 5, 1974, will be refunded. Policyowners with RPR at August 4, 1974, would receive a cash payment equal to 15.68% of the additional premium paid for the RPR received through August 4, 1974. See Parts III and IV.

C. *Liquidated Cash Value Payments.* As set forth in Part V, all policyowners will have an option to receive a liquidated cash value payment in lieu of accepting the changed policy provisions. See Part III also.

D. *Policyowners Who Accepted the July 9, 1974, Offer.* The policyowners who accepted the July 9, 1974, offer and terminated basic coverage will be offered a reinstatement of basic coverages as specified in Part IV(C).

E. *Agents' Commissions.* Agents' commission agreement will be modified as specified in Part VII.

EXHIBIT A

F. *Structural Changes in UNAC.* As set forth in Part VIII, UNAC's common stock will be placed in a voting trust to provide for representation of policyowner interests on UNAC's Board of Directors. The Department of Insurance may maintain a representative at UNAC's office for two years or such additional period as the Department deems advisable, and new management will be selected.

G. *Additional Policy Benefits.* As set forth in Part XI, UNAC will attain a minimum initial capital and surplus of $2,500,000 through a reduction in liabilities to policyowners. A corresponding policy benefit will be created for the RPR policyowners as of August 4, 1974, conditionally obligating UNAC to make return of premium payments aggregating $2,500,000, plus interest, to such policyowners within ten years.

H. *Participating Policies.* To the extent UNAC generates profits from the basic coverage as restructured, those profits will be returned to the policyowners in the form of policy dividends as set forth in Part III(I).

I. *Third Party Recoveries.* As described in Part IX, any recovery from others as a result of legal action or claims by the Department or UNAC after rehabilitation will inure to the benefit of the RPR policyowners as of August 4, 1974. See Part X(C) also.

J. *Contingent Liabilities.* The Rehabilitation Plan resolves certain liabilities of UNAC as follows: UNAC purchased certain policies, principally RPR policies, from Guarantee Reserve Life Insurance Company in 1968. UNAC will have no obligation to Guarantee. Cal-Lind Funding Corporation has made claims against UNAC

based upon three agreements between Cal-Lind or its subsidiary and UNAC. UNAC will have liability to Cal-Lind or its subsidiary. UNAC will have no liability to any guaranty association which itself has obligations to UNAC's policyowners, except as set forth in Part X(C). UNAC will have no liability to any other party whose rights or claims are not dealt with by the Rehabilitation Plan *and* are not recognized by the Department as being valid prior to the effective date of the Rehabilitation Plan. See Part X.

K. *Settlement of Litigation and Claims.* As set forth in Part XIII, in consideration of the provisions of the Rehabilitation Plan, all claims against UNAC by policyowners will be compromised and dismissed, and all persons will be discharged from any liability for acts during the rehabilitation of UNAC.

II. *Definitions.*

The following terms have the following meanings as used in this Rehabilitation Plan.

Department: The Department of Insurance of the State of Indiana or the Commissioner of Insurance of the State of Indiana, as Rehabilitator of UNAC under the Indiana Insurance Laws.

UNAC: Underwriters National Assurance Company.

International: UNAC International Corporation, the holding company owning all the stock of UNAC.

Rehabilitation Court: The Superior Court of Marion County, Indiana, Room No. 5, where the UNAC rehabilitation proceeding is pending as Cause No. S574-851.

Return of Premium Rider ("RPR"): A rider attached to most of the policies issued by UNAC, promising

return of a portion of the paid premiums if certain conditions are met, generally that no claims under the terms of UNAC's policies are asserted under the basic coverage for a period of ten years in excess of a stated percentage of premiums.

Basic Coverage: All insurance coverage except any return of premium rider.

Non-Cancellable Policy: An accident and health policy of insurance containing a provision that the policy may not be cancelled or amended in any respect (including adjustments to premiums) except for non-payment of premium.

Guaranteed Renewable Policy: An accident and health policy of insurance containing a provision that the policy may not be cancelled in any respect except for nonpayment of premium; however, UNAC has the right from time to time to modify the scale of renewal premium rates based upon experience by class.

Active Claim: An existing claim under any contract of insurance issued by UNAC in which benefits are currently being paid or are currently payable.

RPR Restart Date: That date when the 10-year accrual period in the return of premium rider starts over again. A restart may be effected in any of the following ways:

1. Lapse and subsequent reinstatement of the policy with a break in coverage during which no premiums are collected.
2. Inception date of a new 10-year accrual period after the completion of a previous 10-year accrual period.
3. Inception of a new 10-year period when claim benefits paid exceed the claim percentage allowance in the return of premium rider.

Commissions: Any fees or compensation paid to an agent, manager, supervisor, or general agent in the form of actual commissions, over-rides, or service fees.

III. *Options to Policyowners.*

UNAC has written a variety of accident and health coverages and life coverages during the period it has been authorized to write insurance. Principal lines written include the following: (1) Life Insurance—UNAC has offered the usual portfolio of life insurance coverages written through individual agents and brokers. UNAC's principal life product in terms of sales has been a flexible premium life policy offering a combination of term insurance and an accumulation fund used to purchase paid-up life insurance at the insured's 65th birthday; (2) Guaranteed Renewable Medical Expense and Accident and Health Products—UNAC has offered hospital, medical and surgical policies providing scheduled indemnities for various kinds of medical care, principally hospital confinement. Under UNAC's major medical coverages, the policyowner is reimbursed for eligible medical expenses after satisfaction of a deductible; (3) Disability Products—UNAC has written a variety of disability coverages over the years with some business written on a guaranteed renewable premium basis. Most disability business, however, has been written on a non-cancellable basis. Disability coverages provide a monthly benefit payable (after satisfaction of a waiting period) for the earlier of the period specified in the contract or the date the insured recovers from his disability.

Specific options will be available to each policyowner depending on the type of basic coverage held on September 30, 1975. If a policyowner fails to make an

election, he will be deemed to have elected Option 2. For RPR policyowners, these options will be in addition to the refund of all RPR premiums paid after August 4, 1974.

THE ELECTION OF OPTION 1 BY A POLICYOWNER WILL CONSTITUTE AN ABANDONMENT OF ANY FURTHER RIGHTS OR CLAIMS SUCH POLICYOWNER MIGHT HAVE UNDER HIS POLICY OR OTHERWISE, EXCEPT AS PROVIDED IN PART IX, THIRD PARTY RECOVERIES, AND AS PROVIDED IN PART XI, ADDITIONAL BENEFITS TO RPR POLICYOWNERS. POLICYOWNERS WITH RPR WHO ELECT OR HAVE BEEN DEEMED TO HAVE ELECTED OPTION 2 WILL BE CONSIDERED TO HAVE WAIVED ANY RIGHTS OR CLAIMS TO RPR BENEFITS THEY MIGHT BE ENTITLED TO ASSERT AGAINST THE GUARANTY ASSOCIATIONS IN THOSE STATES HAVING SUCH GUARANTY ASSOCIATIONS.

The options set out below do not include an increase in premiums. However, in changing non-cancellable policies to guaranteed renewable policies, UNAC will have the right, subject to any required regulatory approvals, to increase premiums in the future.

A. *Non-Cancellable Disability Policyowners with RPR.*

Option 1. Liquidated cash value, determined as of September 30, 1975;

or

Option 2. Receive RPR liquidated cash value and retain basic coverage as modified to be a guaranteed renewable policy.

B. *Non-Cancellable Disability Policyowners without RPR.*

Option 1. Liquidated cash value, determined as of September 30, 1975;

or

Option 2. Retain basic coverage as modified to be a guaranteed renewable policy.

C. *Guaranteed Renewable Disability Policyowners with RPR.*

Option 1. Liquidated cash value, determined as of September 30, 1975;

or

Option 2. Retain basic coverage, as is, and receive RPR liquidated cash value.

D. *Guaranteed Renewable Disability Policyowners without RPR.*

Option 1. Liquidated cash value, determined as of September 30, 1975;

or

Option 2. Retain basic coverage, as is.

E. *Guaranteed Renewable Medical Expense Policyowners with RPR.*

Option 1. Liquidated cash value, determined as of September 30, 1975;

or

Option 2. Retain basic coverage, as is, and receive RPR liquidated cash value.

F. *Guaranteed Renewable Medical Expense Policyowners without RPR.*

Option 1. Liquidated cash value, determined as of September 30, 1975;

or

Option 2. Retain basic coverage, as is.

G. *All other Accident and Health Policyowners without RPR.*

Option 1. Liquidated cash value, determined as of September 30, 1975;

or

Option 2. Retain basic coverage as is.

H. *All Life Insurance Contracts.*

No options available, coverage remains as is.

I. *Non-Cancellable Policyowners' Participation in Future Underwriting Profits.*

1. Non-cancellable policyowners who elect to retain basic coverage with UNAC as modified to be guaranteed renewable policies will participate in future underwriting profits from the basic coverage, if any, if UNAC in the form of annual policyowner dividends.

2. The future underwriting profits will be defined as those amounts earned in excess of expenses, claims, and reserve requirements on premiums collected from all non-cancellable policyowners who elected to retain basic coverage with UNAC. However, UNAC will be under no obligation to pay annual dividends in excess of an amount equal to any premium increases subsequently imposed. To the extent there are additional profits, those profits will be used to retire the Limited RPR in Part XI.

3. Only those policyowners who hold contracts in force at the time an annual policyowner dividend, if any, is declared will participate in such annual policyowner dividends.

4. Annual dividends, if any, will be paid in the form of a credit toward future premiums due, unless the policyowner requests in writing that the dividend be paid in cash.

IV. *RPR Benefits.*

A. *Refund of RPR Premiums Since Rehabilitation.*

All RPR premiums collected on or after August 5, 1974, will be refunded in full to the policyowner who has paid the premium, including those who have lapsed or surrendered their policy subsequent to August 4, 1974.

B. *Cash Payment for RPR Benefit Prior to Rehabilitation.*

A calculation will be made of the RPR premiums paid from the effective date of the RPR or the latest RPR Restart Date through August 4, 1974, on each policy with an RPR in force on August 4, 1974. Each policyowner will receive a payment of 15.68% of the additional premium paid for the RPR paid to that date. The payment to any policyowner who elected a refund of RPR premium under UNAC's buyout offer of July 9, 1974, exceeded the amount payable under this provision. Accordingly, those policyowners will receive no payment under this provisions.

C. *Policyowners Affected by UNAC "Buy-Out" Proposal of July 9, 1974.*

1. Any policyowner who terminated his basic coverage as a result of the buy-out offer made by UNAC on July 9, 1974, will be given the opportunity to reinstate his basic coverage as modified to be a guaranteed renewable policy under the following guidelines:

(a) Reinstatement will be on a current date basis, in accordance with the reinstate-

ment provision of the policy and without collection of back premiums.

(b) The applicant must submit a personal statement of good health and must be employed on a full-time basis in his occupation.

(c) The applicant must respond to the reinstatement offer within 30 days.

2. No offer will be made to reinstate coverage on the RPR, nor will any reinstated or reissued contract contain an RPR.

3. Any RPR policyowner who accepted the July 9, 1974, offer of UNAC and desires reinstatement of coverage must repay to UNAC the excess of the amount received by him pursuant to the offer over the amount to which he would be entitled under Part IV(B) if payments under Part IV(B) were made to persons accepting the July 9, 1974, offer.

V. *Method of Determining Liquidated Cash Value.*

A. The figures listed below are based upon financial data at September 30, 1975. Liquidated cash values will be computed as follows:

1.	Assets at Book Value per UNAC's September 30, 1975, Financial Statements		$31,171,988
2.	Adjustments to Assets		
	(a) Policy Loans on Life Policies Netted by Reduction of Life Policy Liabilities	$ 960,974	
	(b) Litigation Expenses	1,000,000	(1,960,974)
3.	Liability Items		
	(a) Advance Premiums	$ 99,422	
	(b) Premium Deposit Funds	2,561	
	(c) Commissions to Agents Due or Accrued	227,471	

(d)	General Expenses, Taxes, etc. Due or Accured	220,946	
(e)	Unearned Investment Income and Unamortized Discount of Interest Sold	683,590	
(f)	Security Fluctuation Reserve	310,610	(1,544,600)
4.	Policyowner Liability Items		
(a)	Active Claims Incurred through September 30, 1975	$13,590,116	
(b)	Refund of RPR premiums from August 5, 1974 through September 30, 1975	2,841,212	
(c)	Statutory Reserves for Continuation of Basic Coverage at September 30, 1975	7,006,819	
(d)	Capital and Surplus for Rehabilitated Company	2,500,000	(25,938,147)
5.	Net Assets at *Book Value* Available for Payment to RPR policyowners		$ 1,728,267
6.	Asset Market Value Adjustment Factor		
(a)	Market Value of Assets at September 30, 1975	$25,542,525	
(b)	Book Value of Assets at September 30, 1975	31,171,988	
(c)	Adjustment factor (a) ÷ (b) =	81.94%	
7.	Market Value of Assets Available for payment to RPR policyowners Line 5 x 6c	$ 1,416,142	
8.	RPR Premiums Paid through August 4, 1974, on policies in force at August 5, 1974 (converted to U.S. dollars)	9,031,622	
9.	Liquidation Percentage to RPR policyowners at August 4, 1974 Line 7 ÷ 8	15.68%	

B. The liquidated cash value for each individual policy is to be determined as follows:

1. Separate all policies in force at September 30, 1975, into basic coverage form and calendar year of issue.

2. For each of the groups determine the total active life reserve as of September 30, 1975, and the annual premium excluding RPR premiums for the policy year ending next following September 30, 1975.

3. The total liquidated cash value for each group will be the total active life reserve for that group, multiplied by the asset market value adjustment factor of 81.94%.

4. For each of the groups determine the liquidation premium percentage which is the total liquidated cash value for each group divided by the total annual premiums for that group.

5. For each policy the liquidated cash value equals the liquidation premium percentage in paragraph 4 determined for that group to which that policy belongs multiplied by the annual premium for the current year excluding RPR premiums paid.

6. For RPR benefits, the liquidated cash value will be RPR premiums paid to UNAC subsequent to August 4, 1974, plus an amount equal to 15.68% of the RPR premiums paid through August 4, 1974.

VI. *Disposition of Policy Claims for Accident or Health Benefits.*

Claim provisions concerning basic coverage are not affected by the Rehabilitation Plan. Once the

policyowner elects to receive the liquidated cash value of his policy, such election will be irrevocable and UNAC will be under no further obligation for claim liability. If no election has been made as of the effective date of the Rehabilitation Plan, no claim will be honored until such election has been made.

VII. *Agent's Commissions.*

A. Current UNAC agent and agency contracts vary substantially with respect to commission rates and vesting privileges. Certain provisions, however, are applicable to all contracts:

1. Each agent or agency contract requires a specified minimum of in force, annualized premium for continued commission payments.

2. Each contract provides for the payment of service fees of 3% to 5% after ten years of policy premium payments.

3. Each contract has had a specific vesting privilege for continuing commission payments based on in force annualized premium and length of active service as an agent.

B. The following changes, applicable to commission payments after the effective date of the Rehabilitation Plan, as determined by the Rehabilitation Court, will result in substantial savings for UNAC:

1. All commissions payable will be limited to the first ten years of premium payments unless vesting privileges are terminated earlier based on the the individual agency contract.

2. No commission will be paid on any future premium increases on individual policies.

3. Future premium increases on individual policies will not be credited to an agent's in

force account for purposes of determining his qualification under Part A(1) above.

VIII. *Structural Changes in UNAC.*

A. The total stock of UNAC is presently held by International. As long as the Limited RPR obligations described in Part XI are outstanding, all of UNAC's common shares will be placed in a voting trust in the form attached as Exhibit B to the Order Approving Plan of Rehabilitation and Settlement of Claims and Litigation of the Rehabilitation Court.

B. The Department may maintain a representative at UNAC's office for two years or such additional period as the Department deems advisable. That representative will have the right to attend all Board and Committee meetings and will receive advance notice of the agenda of those meetings.

C. New management will be selected consistent with guidelines to be promulgated by the Department. No person active in UNAC's management prior to rehabilitation will be employed except those persons who have been retained to date by the Department who may, but are not required to, be retained in the future. Specifically, any employment contract entered into between UNAC and any of its officers, directors and employees prior to rehabilitation shall be null, void and of no effect.

IX. *Third Party Recoveries.*

On December 2, 1975, the Department as Rehabilitator of UNAC filed a complaint in the Superior Court of Marion County, Indiana, against certain defendants for the enforcement of rights vested in UNAC. The defendants include the officers and directors of UNAC from 1969 through 1974;

Charles M. Beardsley and Booke and Company, former consulting actuaries of UNAC; and Ernst and Ernst, former auditors of UNAC. The theories of the complaint are breach of contract and negligence. Also filing similar claims against the defendants were certain UNAC policyowners on their own behalf and on behalf of a class consisting of all policyowners who hold now or have held contracts of insurance with INAC. The venue of the lawsuit was changed to the Superior Court of Hamilton County, Indiana.

Any recovery from the defendants in the lawsuit now pending in the Superior Court of Hamilton County or any other recovery as a result of legal action or claims by the Department or UNAC after rehabilitation as based on liability incurred for acts or omissions prior to rehabilitation shall inure to the benefit of RPR policyowners as of August 4, 1974, in proportion to their payments under Part IV(B). UNAC will maintain a list of those policyowners until all litigation has been concluded and all recoveries, less litigation costs, have been distributed to the policyowners.

Neither the lawsuit not pending in the Superior Court of Hamilton County nor any other legal action or claims by the Department or UNAC after rehabilitation as based on liability incurred for acts or omissions prior to rehabilitation shall be settled or dismissed without the prior written approval of the Department and the Rehabilitation Court.

X. *Contingent Liabilities.*

A. *Guarantee Reserve Life Insurance Company.*

UNAC purchased certain policies, principally RPR policies, from Guarantee Reserve Life Insurance Company in 1968. Guarantee contends

that it has no further liability to those policyowners. However, should there be any such liability, Guarantee has indicated that it seeks indemnity from UNAC. Guarantee also asserts rights to indemnity for its cost of defense. These policies are hereby treated in the same manner as those policies issued directly by UNAC, both classes of which have been represented by counsel herein. UNAC shall have no further obligation or liability to Guarantee.

B. *Cal-Lind Funding Corporation.*

Cal-Lind Funding Corporation has made two claims against UNAC based on three agreements between UNAC and Cal-Lind of California, a subsidiary of Cal-Lind Funding Corporation. Cal-Lind claims unearned premiums in the sum of $61,725.09 and loans in default in the sum of $86,845.97 stemming from the agreements. The Department denies the claims, asserting invalid execution and that UNAC did not have legal authority to make such agreement. The claims and defenses were tried by the Court. The Court finds:

1. All transactions and dealings between Cal-Lind, or its subsidiary and UNAC were fair, reasonable, beneficial to UNAC, and its agents, employees and policyholders, and were fully and publicly disclosed.

2. There was no unlawful self-dealing between Cal-Lind and UNAC with respect to these transactions.

3. Pursuant to contract, loans are in default resulting in unearned premiums being owned by UNAC to Cal-Lind and its subsidiary in the sum of $61,724.00.

4. Pursuant to contract, loans are in default from employees and agents of UNAC, resulting in guarantees being owed by UNAC to Cal-Lind and it's subsidiary in the sum of $80,589.00.

5. The service agreement between UNAC and Cal-Lind was fair and reasonable and UNAC is not entitled to a set-off in these proceedings. Therefore, Cal-Lind Funding Corporation is granted judgment against UNAC in the amount of $142,313, each party to bear its own costs; and further that execution of said judgment is hereby abated until January 1, 1978; or as the Department and UNAC may deem payable in part or in full prior to that date.

C. *Guaranty Associations.*

On August 4, 1974, UNAC was licensed to do business in states which either had at that time or have subsequently enacted legislation providing for some form of life and/or health insurance guaranty association. While the legislation in each state differs particularly as to its applicability, the general purpose of such legislation is to protect the state's policyowners, subject to certain limitations, against failure in performance of contractual obligations due to the impairment of the insurer. To provide that protection, an association of insurers is created to ensure the payment of policy benefits and of continuation of coverages, and members of the association are subject to assessment to provide funds to carry out that purpose.

The Rehabilitator understands that the guaranty associations in the eight states of Connecticut, Kansas, Montana, Nevada, New Hampshire, North Carolina, South Carolina and Vermont

may have certain obligations to UNAC policyowners residing in their respective states on August 5, 1974. To the extent that any guaranty association as a result of the rehabilitation proceeding, makes a payment to or on behalf of a UNAC policyowner, that policyowner's rights under the UNAC policy shall be deemed to be assigned to the guaranty association until such time as the guaranty association has been fully reimbursed. UNAC shall have no further obligation or liability to any guaranty association, other than the obligation to recognize as valid the assignment of the policyowner's rights to the guaranty association and to treat the guaranty association as it would have treated the policyowner; *provided, however*, if any guaranty association makes any payment to or on behalf of any policyowner which is not fully reimbursed pursuant to the foregoing provisions, that association shall receive from UNAC each year until fully reimbursed a portion of UNAC's statutory net gain from operations after dividends to policyowners, federal income taxes and the payments to be made under Part XI, equal to the annual premium in force for basic coverage in the state of that association on August 5, 1974, divided by the total annual premiums in force for basic coverage of UNAC on August 5, 1974.

D. *Other Contingent Liabilities.*

1. Airline Pilots Insurance Agency, Inc., a former sales agent of UNAC, has been granted leave to intervene in the rehabilitation proceeding. Thomas R. McGeoghegan, on behalf of himself and all other managers and supervisors and agents of UNAC, has sought leave to intervene in the rehabilitation

proceeding. Part VII. of the Rehabilitation Plan provides for agents' commissions and UNAC shall have no additional liability to Airline Pilots Insurance Agency, Inc., Thomas R. McGeoghegan, or any other manager, supervisor or agent of UNAC, other than the liability described in Part VII.

2. The Rehabilitation Plan deals with the rights and claims of various parties interested in UNAC. Those parties shall have no rights or claims against UNAC other than as provided by the Rehabilitation Plan. As to other parties, if any, whose rights or claims are not recognized by the Department as being valid prior to the effective date of the Rehabilitation Plan, UNAC shall have no liability to said parties. The Department recognizes UNAC's liability to pay for goods and services furnished to UNAC in the course of its business and the rehabilitation.

XI. *Additional Benefits to RPR Policyowners.*

UNAC is a stock company, all of whose shares are owned by International. An initial capital and surplus of $2,500,000 are necessary to give the rehabilitated company an adequate reserve against unforseen contingencies and to give reasonable assurance of UNAC's ability to meet its obligations in the future. No infusion of new capital is believed presently available. Accordingly, the only source of the necessary capital and surplus is reduction of liabilities which, unless accompanied by the extension of a corresponding additional policy benefit, might benefit the shareholders at the expense of the policyowners.

UNAC shall create for the members of the class of RPR policyowners as of August 4, 1974, an additional

policy benefit in the form of a limited return of premium rider ("Limited RPR") in addition to the cash payments described in Part IV. The Limited RPR obligates UNAC to make payments to such policyowners in the aggregate principal amount of $2,500,000, within ten years, together with interest at the rate of 6% per annum. Limited RPR payments will be required upon the expiration of ten years or at any time UNAC has capital and surplus of $4,000,000, but no payment will be made which would reduce the capital and surplus in UNAC below $2,500,000. The payment of the Limited RPR is expected to be dependent on UNAC's ability to generate profits. However, because International will be obliged at the end of the 10-year period to pay UNAC the amount of any Limited RPR payments not yet made, with interest, there also is a possibility of future borrowing or raising of capital by International in order to infuse new capital into UNAC to permit it to make the Limited RPR payments. Alternatively, all or a portion of the pledged UNAC stock might be sold in order to satisfy the Limited RPR benefits. If all Limited RPR payments are not made or otherwise satisfied at the expiration of the 10-year period, UNAC is obligated to cause the formation of a mutual insurance company and merge itself into the mutual company with the voting trustees obligated to vote for the merger.

UNAC shall request a "no action" letter from the Securities and Exchange Commission to the effect that the creation of the Limited RPR is not a transaction subject to registration under the Securities Act of 1933, and the views of the Securities Commissioners of the several states shall also be solicited. If required and feasible, the Limited RPR shall be registered as a security in UNAC's jurisdictions, if any, where it is required.

XII. *Foreign Jurisdictions.*

UNAC has significant numbers of policyowners in Canada and the United Kingdom. The Department will submit the Rehabilitation Plan to foreign regulatory authorities, or take such other steps as the Department deems to be in the best interests of UNAC.

XIII. *Settlement of Litigation.*

A. *Description of Pending Litigation.*

Three policyowner class action lawsuits and one individual policyowner lawsuit, which are similar but not identical, have been filed against UNAC and stayed by the respective courts having jurisdiction. These are the following:

Robert Schultz and All Members of the Class v. Underwriters National Assurance Company, Cause No. 74CH 4659 in the Circuit Court of Cook County, Illinois, County Department, Chancery Division, subsequently removed to federal court, where it is now pending as *Robert Schultz v. Underwriters National Assurance Company,* Civil Action No. 74 C 2550 in the United States District Court for the Northern District of Illinois, Eastern Division (hereinafter referred to as the "Chicago case").

B. M. Honeycutt, et al. v. Underwriters National Assurance Company, Civil Action No. 482-74-A in the United States District Court for the Eastern District of Virginia (hereinafter referred to as the "Virginia case").

Charles R. Hall, D.D.S., Richard R. Cannon, D.D.S., P.A. v. Underwriters National Assurance Company, Civil Action No. 75-7-900 in the Circuit Court of Madison County,

Alabama, subsequently removed to federal court, where it is now pending under the same title as Civil Action No. 75-L-1589-NE in the United States District Court for the Northern District of Alabama, Northeastern Division (hereinafter referred to as the "Alabama case").

John Warren Meyer v. Guarantee Reserve Life Insurance Company and Underwriters National Assurance Company, Cause No. 786-532 in the Superior Court of King County, Washington (hereinafter referred to as the "Washington case").

The Chicago and Virginia cases are action on behalf of classes consisting of some or all of the policyowners whose policies include an RPR. The Chicago case seeks an injunction against termination of certain insurance policy provisions, a constructive trust on the assets of UNAC, and punitive damages in the amount of $500,000. The Virginia case seeks damages in the amount of $180 million, punitive damages in the amount of $120 million, specific performance of policy provisions, other equitable relief, costs and attorneys' fees. Both cases, on the Department's motions, were stayed by the respective federal courts in which they are pending. The plaintiffs in both cases have, however, been granted leave to intervene in the Indiana rehabilitation proceeding. The class representative in the Chicago case has filed a complaint in the rehabilitation proceeding generally corresponding to the claim initially asserted. The class representatives in the Virginia case have not filed a complaint in the rehabilitation proceeding. The Chicago and Virginia plaintiffs have been conditionally determined by the Rehabilitation Court to

represent as intervenors the class of all UNAC present and former policyowners.

The Alabama case purports to be an action on behalf of a class consisting of all policyowners in Madison County, Alabama, whose policies include an RPR. Compensatory damages are sought, although the actual amount of those damages was not stated in the complaint. On the Department's motion, the Alabama case was stayed by the federal court and the Alabama plaintiffs have not sought to intervene in the rehabilitation proceeding.

The Washington case is an action by a holder of two policies with RPRs that were originally issued by Guarantee Reserve Life Insurance Company and assumed by UNAC in 1968. The trial court entered judgment in favor of the plaintiff and against Guarantee for $6,317.88, the amount found due under the RPRs. The trial court stayed all proceedings against UNAC by the plaintiff and by Guarantee. The Washington plaintiff has not sought to intervene in the rehabilitation proceeding.

On December 1, 1975, James A. Newpher ("Newpher"), a policyowner of UNAC, filed a petition for intervention in the rehabilitation proceeding asserting that his interests are not represented by the Chicago and Virginia class plaintiffs, stating that he does not desire to be represented by them, and requesting that an investigation be conducted of certain matters in the rehabilitation proceeding. Newpher also asked the Rehabilitation Court to grant various alternative forms of injunctive and monetary relief for the alleged wrongful acts of the Department and others.

B. *Settlement of Asserted and Unasserted Claims.*

In consideration of the provisions of the Rehabilitation Plan, the claims of the UNAC policyowner class representatives are compromised and dismissed. While the Alabama class plaintiffs and the Washington plaintiff have not filed any claim against UNAC in the rehabilitation proceeding, those plaintiffs are members of the policyowner class represented by the intervening Chicago and Virginia class plaintiffs. Whether or not any policyowner is a member of a class pursuant to Trial Rule 23, in order to fix and determine UNAC's obligations after rehabilitation, all claims of UNAC policyowners against UNAC are compromised and dismissed, including the claims of Newpher. The claims of Newpher or any other policyowner against the Department are compromised and dismissed and the Department and its personnel are discharged from any liability for their acts incident to the rehabilitation of UNAC.

Subsequent to the filing of the Department's initial Proposed Rehabilitation Plan for UNAC, certain of the defendants in the lawsuit described in Part IX filed "counterclaims" against UNAC or the Department as Rehabilitator of UNAC for certain actions taken in connection with the rehabilitation of UNAC. Also, International filed suit against the Department as Rehabilitator of UNAC for certain actions taken in connection with the rehabilitation of UNAC. These contentions, to the extent they may be raised by the persons asserting them or any other person, to the extent they are cognizable by any court, and to the extent they concern actions taken in connection with the rehabilitation of UNAC, are

properly determined by the Rehabilitation Court. The Department and its agents and employees are discharged from any liability for such claims.

* * *

[Exhibit B omitted in printing]

10.

[Notices In The Superior Court of Marion County, Indiana, Room No. 5]

[Indiana Department of Insurance Letterhead]

To: All Interested Parties

Re: Underwriters National Assurance Company Rehabilitation

This is to advise you that Judge Michael T. Dugan, II, of the Superior Court of Marion County, Indiana, Room No. 5, issued a final Order regarding the rehabilitation of Underwriters National Assurance Company on November 22, 1976. The final Order approved a Plan of Rehabilitation generally along the lines of the plan sent you earlier this year, with certain variations. The chief variations are: (1) UNAC is ordered to pay in full the claims of creditor Cal-Lind Funding Corporation, (2) the Court will appoint from five to eleven people (Trustees) to represent the diverse groups and interests involved in the rehabilitation of the company and to select a Board of Directors, and (3) the Order acknowledged that certain assets held in Canada and the United Kingdom, will not be available at this time for distribution to policyowners until after, if at all, a clarification is obtained from the United Kingdom and Canadian authorities, and the Order directs UNAC to exclude such assets from UNAC's calculations in determining the amount of distribution to policyowners.

The Court will appoint the Trustees on or before December 22, 1976. The Trustees will select a Board of Directors on or before January 22, 1977. The company will be released from rehabilitation after the new Board of Directors is appointed, allowing the company to resume business operations. The Board of Directors will then select people to manage the ongoing operations of the company. The Order states that the refunds to policyowners provided by the Plan are to be made by management after it is

selected. No time is established for this, but we anticipate it will be well into 1977 before the future management can do all those things necessary to make these refunds. When new management is employed, it will send policyowners: (1) a copy of the final Order and Plan, (2) a data sheet showing their options, liquidated values, RPR refunds, etc., and (3) a form for policyowners to select their desired option under the Plan.

Under the Plan all RPR benefits are to be terminated and refunds made of all RPR premiums collected since August 5, 1974. No further RPR premiums are to be paid by policyowners. All RPR policyowners should be advised that on or before ten years you are entitled to receive your pro rata share of the $2,500,000.00 Limited RPR provided by the Plan, plus 6% interest per annum until paid. If the Limited RPR obligation is not paid when due, the company will be mutualized for the benefit of policyowners. You are also entitled to a pro rata share of any future recovery, if any, from the pending litigation against third parties and a refund of between approximately 7% and approximately 15-½% of the premiums paid for the RPR prior to August 4, 1974. The percentage and timing of the refund will depend on resolution of the situation in the United Kingdom and Canada. Those non-cancellable policyowners who continue to keep insurance on a guaranteed renewable basis with the company are entitled to receive dividends from the company from profits, if any, earned on this business in the future, to the extent that there are future premium increases. Other profits, if any, will be applied to retire the Limited RPR obligation. *In view of the RPR policyowners' and non-cancellable policyowners' rights to these benefits, it is essential that policyowners constantly keep the company advised of any change in mailing address.*

With the exception of the termination of RPR benefits and the conversion of non-cancellable policies to guaranteed renewable policies, no policy benefits are to be

changed. The company has always honored all policy benefits except RPR, and it should be expected to do so in the future.

You should not expect to receive further advise from anyone representing UNAC until new management is employed and has an opportunity to structure and assume its appropriate duties. This should occur within the first quarter of 1977, but may take longer. In the meantime, the Rehabilitation Court will continue to monitor the affairs of the company.

This letter is intended only to give you a general overview of the Court's final Order. A copy of the final Order and the Plan as approved by the Court is available from the Department upon request at $5.00 per copy if you desire a copy prior to the time new management is required to send you one.

Sincerely yours,

H.P. Hudson, Commissioner
Indiana Department of Insurance
As Rehabilitator of Underwriters
National Assurance Company

HPH:jec

To All Members of the Class Composed of Past and Present UNAC Policyholders

As the lead counsel for the Class of Policyholders for UNAC, we are taking this opportunity to share with you the current status of the Court approved Plan of Rehabilitation referred to in Commissioner Hudson's letter, enclosed.

Any plan of rehabilitation is by definition a compromise among conflicting interests. Its purpose is to identify the underlying causes of a company's financial problems, and to establish a new means by which the rehabilitated company can have a reasonable chance for future financial stability and growth, consistent with the basic rights of policyholders and creditors. The Plan of Rehabilitation for UNAC attempts to fit this pattern, and represents the collective effort of a great many people over a two-year period.

The Court approved Plan of Rehabilitation contains several provisions of prime importance and consideration to you, the Policyholder. Principal among these is the continuation of your basic insurance coverage which, if UNAC was forced to liquidate, would be cancelled. In our judgment, that alternative would not be in the best interest of the Policyholders as a group.

The additional financial benefits to Policyholders are fairly outlined in Commissioner Hudson's letter. Among those is the provision that any recoveries obtained in the Hamilton County litigation against certain defendants will enure to the benefit of the Policyholders who held the RPR. We believe that litigation has possibilities for additional recoveries by the RPR policyholders. As yet we are unable to express an opinion as to the likelihood of success in that action, but all efforts will be made on your behalf to prosecute your claims to a successful conclusion.

There are a number of separate provisions in the approved Plan which we, as your attorneys, have opposed

throughout the course of the Rehabilitation proceeding. These provisions could now be the subject of an appeal which we could prosecute on your behalf. However, based upon our analysis of the facts, the applicable law and the practicalities of the situation, it is our considered judgment, and that of a number of the named Policyholders who have undertaken to be representatives of the Class, that any appeal we might take from the Plan would materially delay the Company's rehabilitation under new management and further erode its financial condition. For these reasons, we are presently included to forego an appeal from Judge Dugan's Order and approved Plan.

We would, of course, prefer to communicate with each of you on a personal basis, to answer any questions you might have and to discuss the details of the Plan with you. By virtue of your sheer numbers, that is impossible and is one of the reasons for having class actions. Nonetheless, we and the named representatives of the Class are interested in your thoughts on this matter. We can be reached at the addresses listed below.

Sincerely,

Martin A. Smith, Esq.
Stephen P. Carponelli, Esq.
Jeffrey M. Goldberg, Esq.
10 South LaSalle Street
Chicago, Illinois 60603

Richard H. Jones, Esq.
John E. Fricker, Esq.
2054 N. 14th Street
Arlington, Virginia 22201

John J. Dillon, Esq.
Gregory F. Hahn, Esq.
120 E. Market Street
Suite 511
Indianapolis, Indiana 46204

Attorneys for UNAC Policyholder Class

11.

[In the Superior Court of Marion County, Indiana, Room No. 5]

[Title omitted in printing]

FILED JUNE 8, 1977

PETITION FOR INSTRUCTIONS CONCERNING A SERVICE CONTRACT BETWEEN UNDERWRITERS NATIONAL ASSURANCE COMPANY AND EACH OF THE STATE INSURANCE GUARANTY ASSOCIATIONS

Underwriters National Assurance Company ("Company") and the insurance guaranty associations in the states of Connecticut, Kansas, Montana, Nevada, New Hampshire, North Carolina, South Carolina and Vermont, which are parties herein ("Guaranty Associations"), jointly petition the Court for instructions concerning the execution of a Service Contract as directed by the Court's Entry of April 20, 1977. Pursuant to part X(C) of the Plan of Rehabilitation approved by the Court on November 22, 1976, and the Court's Entry of April 20, 1977, the Company and the Guaranty Associations have now negotiated a Service Contract acceptable to them, a copy of which is attached hereto as Exhibit A.

WHEREFORE, the Company and the Guaranty Associations ask the Court to enter an Order authorizing and directing the Company and each of the Guaranty Associations to execute a Service Contract in substantially the form attached hereto as Exhibit A and to do all acts

reasonably necessary or appropriate to implement and carry out the Service Contract.

Respectfully submitted,

BAKER & DANIELS

By /s/ Theodore R. Boehm

/s/ Charles T. Richardson

Attorneys for Underwriters National Assurance Company

810 Fletcher Trust Building
Indianapolis, Indiana 46204
317/636-4535

KIGHTLINGER, YOUNG, GRAY & DETRUDE

By /s/ Mark W. Gray

/s/ Donald L. Dawson

151 North Delaware Street
Suite 660
Indianapolis, Indiana 46204
317/638-4521

Attorneys for Connecticut Life and Health Insurance Guaranty Association, Kansas Life and Health Insurance Guaranty Association, Montana Life and Health Insurance Guaranty Association, Nevada Life and Health Insurance Guaranty Association, New Hampshire Life and Health Insurance Guaranty Association, North Carolina Life and Accident and Health Guaranty Association, South Carolina Life and Health Insurance Guaranty Association and Vermont Life and Health Guaranty Insurance Association

[Certificate of service omitted in printing]

SERVICE CONTRACT

THIS AGREEMENT, executed at Indianapolis, Indiana, this ____ day of _____, 1977, by and between Underwriters National Assurance Company, an Indiana insurance corporation ("Underwriters"), and _____, organized under the law of _____ (the "Guaranty Association"),

WITNESSES:

Recitals

A. On August 5, 1974, the Superior Court of Marion County, Indiana, Room No. 5 ("Rehabilitation Court"), entered an Order of Rehabilitation pursuant to the law of the State of Indiana concerning the affairs of Underwriters in Cause No. S574-851;

B. On November 22, 1976, the Rehabilitation Court entered a final Order and approved a Plan of Rehabilitation for Underwriters, copies of which are attached hereto and incorporated herein;

C. The Plan of Rehabilitation makes certain changes in the insurance policies issued by Underwriters to its policyowners prior to August 5, 1974, among which changes are the following:

1. Certain of the policyowners have heretofore had non-cancellable insurance policies which provide, in effect, that there can be no increase of premium on the policy during the term of the policy. The Plan of Rehabilitation changes the non-cancellable insurance policies to guaranteed renewable policies in which there is a probability that there will be a premium increase based upon experience by class.

2. Certain of the policyowners have heretofore had insurance policies with a Return of Premium Rider

("RPR") attached, promising a return of a portion of the paid premiums if certain conditions set forth in the policy are met. The Plan of Rehabilitation terminates all obligations of Underwriters under the RPR; and

D. The Guaranty Association has informed Underwriters that, pursuant to the law of _____, the Guaranty Association is required in certain instances to guarantee to policyowners who qualify their rights to the enforcement of a non-cancellable insurance policy and to the enforcement of an RPR; and

E. It is in the best interests of the policyowners whose rights are guaranteed by the Guaranty Association for there to be continuity in the servicing of the insurance policies issued by Underwriters; and

F. Under the Plan of Rehabilitation, Underwriters will continue as a rehabilitated insurance company and will service its insurance policies, as changed and modified, pursuant to the final Order and Plan of Rehabilitation;

Agreement

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. *Servicing of Policies.* Underwriters will continue to service its insurance policies which are guaranteed by the Guaranty Association in the same manner as it services its insurance policies not so guaranteed. All billing for premiums, all collection of premiums and the payment of all claims, except RPR claims, arising under policies which are guaranteed by the Guaranty Association will be made by Underwriters. Underwriters will maintain adequate records in order to determine the status of all insurance policies which are guaranteed by the Guaranty Association and to provide information to the Guaranty Association to the extent required for the performance of the Guaranty Association's obligations hereunder. Not later than 60 days

after the last date for election by policyowners under Underwriters' notice provided by paragraph (4) of the final Order, the Guaranty Association will certify to Underwriters a list of those policies which are guaranteed by the Guaranty Association. The parties understand that the list may need to be amended in individual cases thereafter.

2. *Premium Increases on Previously Non-Cancellable Policies.* In the event that an increase in premium for basic insurance coverage above the premium which could have been charged by Underwriters for the same coverage as the policy was written on August 5, 1974, is applicable to any policy which was previously a non-cancellable policy, and which the Guaranty Association has certified to Underwriters as being guaranteed by the Guaranty Association, Underwriters will keep a separate record of the amount and date of the premium increase. Underwriters will continue to bill the policyowner at the premium which could have been charged by Underwriters for the same coverage as the policy was written on August 5, 1974, and will bill the Guaranty Association for the amount of the premium increase. The Guaranty Association will pay to Underwriters the amount of the premium increase and Underwriters will continue the basic insurance coverage of the policyowner as if all of the premium had in fact been paid by the policyowner.

3. *Return of Premium Rider ("RPR").* If any policyowner with a policy having an RPR which the Guaranty Association has certified to Underwriters as being guaranteed by the Guaranty Association desires to continue to carry the RPR and pay the premium which could have been charged by Underwriters for the same coverage as the policy was written on August 5, 1974, for the RPR, Underwriters will collect the premium for the RPR from the policyowner and will remit said funds quarter to the Guaranty Association. In the event the RPR matures, the benefits payable under the RPR will be paid

by the Guaranty Association, not by Underwriters. Underwriters will provide the Guaranty Association with all statistical data necessary to determine the amount and eligibility of the policyowner for RPR benefits within 15 days after the RPR has matured.

4. *Assignments.* The Plan of Rehabilitation provides for the exercise of certain options by policyowners. The Guaranty Association will require a written acknowledgment in certain instances of an assignment to the Guaranty Association by a policyowner whose rights are guaranteed by the Guaranty Association of all the policyowner's rights under the Plan of Rehabilitation. The Guaranty Association will supply each assignment to Underwriters. Underwriters will recognize any such assignment, as well as the assignments provided by part X(C) of the Plan of Rehabilitation, as valid and will make payments of any funds payable to an assigning policyowner under the Plan of Rehabilitation to the Guaranty Association pursuant to the terms of the assignment.

5. *Service Fee.* In return for its services as set out in this Service Contract, Underwriters will be paid by the Guaranty Association a service fee in the amount of the cost to Underwriters of rendering the service, computed according to generally accepted accounting principles as determined from time to time by Underwriters' independent auditors. In the event Underwriters' independent auditors decided that the expense of determining such cost is excessive in relation to such cost, the auditors may in their best judgment from time to time fix a reasonable approximation of such cost which shall be conclusive on the parties, unless the parties negotiate a service fee. In addition, and as a part of the service fee, the Guaranty Association agrees to indemnify and save Underwriters harmless from and against all claims, losses, damages, liabilities, costs, expenses and attorneys' fees arising out of this Service Contract, except in cases of independent acts of negligence or willful misconduct by Underwriters' employees.

6. *Payment of Service Fee and Other Monies.* Except as provided hereafter, all funds due the Guaranty Association by Underwriters shall be mailed quarterly to the Guaranty Association at such office and address as the Guaranty Association shall from time to time direct in writing. Underwriters shall prepare an invoice for each fiscal quarter of Underwriters list and describing in reasonable detail the service fee owed by the Guaranty Association under paragraph 5 of the Service Contract for the past quarter and other monies due Underwriters under this Service Contract. All funds due Underwriters by the Guaranty Association shall be mailed directly to Underwriters within thirty days after the Guaranty Association receives an invoice therefor. Monies paid by the policyowner to preserve his rights under the RPR are not a premium for coverage but are a deposit to preserve the rights of the policyowner under the Guaranty Association's enabling statute. The Guaranty Association is not an insurer but is a guarantor only. If, as of any December 31, the sum of all payments by the Guaranty Association to or on behalf of policyowners are in excess of the sum of all payments to the Guaranty Association by Underwriters under this Service Contract, Underwriters shall mail to the Guaranty Association at such office and address as the Guaranty Association shall from time to time direct in writing and on or before the March 31 immediately following that December 31, and each March 31 thereafter until the excess has been fully reimbursed, a portion of Underwriters' statutory net gain from operations for the year ended on that December 31 after dividends to policyowners, federal income taxes and the payment to be made under part XI of the Plan of coverage on August 5, 1974, divided by the total annual premiums in force for basic coverage of Underwriters on August 5, 1974.

7. *Audit.* The Guaranty Association is entitled to require an audit at its expense at any reasonable time to review all payments and receipts contemplated by this Service Contract.

8. *Agents' Commissions.* No agents' commissions shall be paid or charged on any amount collected by Underwriters and paid to the Guaranty Association on account of RPRs. No agents' commissions shall be paid or charged on any amount paid to Underwriters by the Guaranty Association on account of any premium increase on previously non-cancellable policies.

9. *Successors and Assigns.* This Service Contract shall be binding upon the successors and assigns of the parties.

10. *Termination.* This Service Contract shall remain in force so long as the liability of the Guaranty Association continues. However, the parties may terminate the Service Contract by mutual agreement at any time, and either party may terminate the Service Contract upon six months' written notice of termination to the other party.

11. *Jurisdiction of the Rehabilitation Court.* It is clearly understood by the parties that Underwriters, the Guaranty Association and this Service Contract are subject to the continuing jurisdiction of the Rehabilitation Court in certain respects under the final Order and the Plan of Rehabilitation.

12. *General Conditions.* This Service Contract is executed under and shall be construed in accordance with the laws of the State of Indiana. No waiver of any term or condition of this Service Contract or of any breach of this Service Contract shall be deemed or construed as a waiver of any other term, condition, or breach, or of a subsequent breach of the same term or condition. This Service Contract constitutes the entire agreement between the parties hereto, and there are no representations, terms, conditions or agreements in respect of the same subject matter, with the exception of the final Order, the Plan of Rehabilitation, including part X(C) thereof, and the other orders of the Rehabilitation Court.

IN WITNESS WHEREOF, the parties have caused this Service Contract to be executed on the day and in the year first above written.

UNDERWRITERS NATIONAL ASSURANCE COMPANY

By _____
President
"Underwriters"

Attest:

_____

_____
"Guaranty Association"

Attest:

_____

12.

NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE, SUPERIOR COURT DIVISION

78CV 174

NORTH CAROLINA LIFE AND ACCIDENT AND HEALTH INSURANCE GUARANTY ASSOCIATION, *Plaintiff* VS. UNDERWRITERS NATIONAL ASSURANCE COMPANY, JOHN RANDOLPH INGRAM, COMMISSIONER OF INSURANCE OF THE STATE OF NORTH CAROLINA, AND HARLAN E. BOYLES, TREASURER OF THE STATE OF NORTH CAROLINA *Defendants*	**COMPLAINT** FILED January 12, 1978

Plaintiff, complaining of Defendants, alleges and says:

AS TO AND FOR THE COURT'S JURISDICTION:

1. This action is commenced under the provisions of the Declaratory Judgment Act, G.S. §§1-253, *et. seq.*, under the North Carolina Life and Accident and Health Insurance Guaranty Association Act, G.S. §§58-155.65, *et. seq.*, and under certain other provisions of the Insurance Law, G.S. §§58-182—58-188.8, regarding deposits by insurance companies. Plaintiff's claims for relief are for declaratory and other proper relief thereunder. Plaintiff's claims relate to, among other things, personal property in this state consisting of deposits by an insurance company, as

hereinafter alleged. Defendants have or claim interests therein, and the relief demanded consists partially in excluding one Defendant from any interests therein. The Court has personal jurisdiction under G.S. §1-75.3 and jurisdiction in rem or quasi in rem under G.S. §1-75.8.

2. Plaintiff, the North Carolina Life and Accident and Health Insurance Guaranty Association ("Association"), is a non-profit unincorporated legal entity organized under the law of the State of North Carolina having its principal office in Raleigh, North Carolina, and as such has the capacity to sue in its own name in North Carolina.

3. Defendant Underwriters National Assurance Company ("UNAC") is an Indiana insurance corporation that transacted the business of insurance in North Carolina, and has or claims an interest in personal property in this State, as hereinafter alleged.

4. Defendant John Randolph Ingram, Commissioner of Insurance of the State of North Carolina ("Commissioner"), is the duly elected Commissioner of Insurance of the State of North Carolina.

5. Defendant Harlan E. Boyles, Treasurer of the State of North Carolina ("Treasurer"), is the duly elected Treasurer of the State of North Carolina.

FOR A FIRST CLAIM FOR RELIEF:

6. Article 17C, Chapter 58 of the General Statutes of North Carolina, known as the "North Carolina Life and Accident and Health Insurance Guaranty Association Act," G.S. §§58-155.65 *et. seq.*, was enacted, ratified, and effective at all times relevant to this action. Among other things, the effects of the Act are (a) to state the purpose of the Act as being to maintain public confidence in the promises of insurers and, among other things, to provide a mechanism for the payment of covered claims under certain insurance policies, (b) to apply the Act to direct life policies, accident and health insurance policies, and other

insurance policies, (c) to provide that the Act shall be liberally construed to effect its purpose, (d) to create the Association, (e) to provide the Association with certain powers and duties which include, among others, enumerated powers and duties regarding a foreign insurer that is an impaired insurer under an order of liquidation, rehabilitation, or conservation as defined in the Act, and which powers and duties include provision that the Association shall have standing to appear before any Court in this State with jurisdiction over an impaired insurer concerning which the Association is or may become obligated under the Act, and (f) to provide for enumerated duties and powers of the Commissioner.

7. Plaintiff is informed and believes, and so alleges, that UNAC is a corporation organized under the law of the State of Indiana, was authorized to transact in North Carolina the business of writing insurance including direct life policies, accident and health policies, and other insurance policies, and did write such policies of insurance in North Carolina.

8. Plaintiff is informed and believes, and so alleges, that UNAC deposited with the Commissioner securities having the total face value of $100,000 for the sole protection of North Carolina policyholders of UNAC, and that the said securities so placed on deposit with the Commissioner are registered in the name of the Treasurer of the State of North Carolina in trust pursuant to the provisions of Article 20, Chapter 58, of the General Statutes of North Carolina.

9. Plaintiff is informed and believes, and so alleges, that the Commissioner has determined that UNAC is unable to fulfill its contractual obligations and that, within the meaning of the Act, UNAC is an impaired insurer under an order of rehabilitation.

10. Pursuant to its powers and duties under the Act, the Association is assuring payment of the contractual

obligations of UNAC to residents of North Carolina. The Association has the right, by subrogation and otherwise, to have the Commissioner sell and transfer the said securities for the protection of North Carolina policyholders and to have the said deposits applied to the payment of the contractual obligations of UNAC to residents of North Carolina.

11. An actual controversy exists as to the duties and powers of the Association and as to its rights to have the said deposits and securities applied to the payment of the contractual obligations of UNAC to residents of North Carolina.

AND FOR A SECOND CLAIM FOR RELIEF:

12. Plaintiff realleges Paragraphs 1-11 with the same force and effect as if set forth herein.

13. Pursuant to the provisions of a section of the Act, namely G.S. §58-155.72(8), the Association has standing to appear before this Court, and such standing shall extend to all matters germane to the powers and duties of the Association.

WHEREFORE, Plaintiff prays:

1. That the Court enter a judgment declaring the Association's powers and duties.

2. That the Court enter a judgment declaring the Association's right to have the said deposits and securities applied to the payment of the contractual obligations of UNAC to residents of North Carolina.

3. That the Court enter a judgment excluding UNAC from any interest in the said deposits and securities, except an interest in such sums as remain after the sale thereof and application of the proceeds thereof to payment of the contractual obligations of UNAC to residents of North Carolina.

4. That the Court enter a judgment providing for its retention of jurisdiction and for granting such further,

supplemental relief based on the declaratory judgment herein prayed, whenever necessary or proper, as by law is provided, and extending to all matters germane to the powers and duties of the Association under the Act.

5. For such further relief as the Court may deem just and proper.

ALLEN, STEED and ALLEN, P.A.

By: /s/ Arch T. Allen, III

Attorneys for Plaintiff, North Carolina Life and Accident and Health Insurance Guaranty Association

13.

[In The North Carolina General Court of Justice, Superior Court Division, Wake County]

[Title omitted in printing]

ANSWER (Filed March 14, 1978)

Underwriters National Assurance Company, defendant, answering the Complaint, alleges:

1. That paragraphs 1, 2, 3, 4, and 5 of the Complaint are not denied.

2. That paragraph 6 of the Complaint refers to provisions of the General Statutes of North Carolina which speak for themselves, or are subject to interpretation by the court. Therefore, defendant denies the purported interpretation contained in paragraph 6 of the Complaint.

3. Paragraph 7 of the Complaint is admitted.

4. That is is admitted that this answering defendant has deposited securities having the total face value of $100,000.00 with the Commissioner of Insurance of North Carolina as a prerequisite for doing business in the state. That the remaining allegations of paragraph 8 are denied.

5. Paragraphs 9, 10 and 11 of the Complaint are denied.

6. Answering paragraph 12 of the Complaint, defendant restates its answers to paragraph 1 through 11 of this Answer.

7. Paragraph 13 of the Complaint is denied.

FIRST DEFENSE

That the Complaint fails to state a cause of action upon which relief can be granted.

SECOND DEFENSE

1. That this Court does not have jurisdiction in the subject matter for the reason that there is a prior action pending in the Superior Court of Marion County, Indiana, Cause No. S574-851, in an action entitled "Department of Insurance, State of Indiana, Petitioner vs. Underwriters National Assurance Company, Respondent", wherein said Court is supervising the Rehabilitation of Underwriters National Assurance Company and in such capacity has complete control of and supervision over all the assets of Underwriters National Assurance Company.

2. That security deposits held in trust are property items and assets of Underwriters National Assurance Company regardless of where situated and how held, and as such are subject to the control, supervision and jurisdiction of the Superior Court of Marion County, Indiana, in the action referred to hereinabove which is still pending in said Court.

3. That in the action pending in the Superior Court of Marion County, Indiana, referred to hereinabove, the plaintiff in this action is a party and is represented by Mark W. Gray and Donald L. Dawson of the law firm of Kightlinger, Young, Gray & DeTrude, 151 North Delaware Street, Suite 660, Indianapolis, Indiana, 46204, who are attorneys of record for the plaintiff in said action.

4. That a Plan of Rehabilitation and Settlement of Claims and Litigation was approved in the Superior Court of Marion County, Indiana, by Order and memorandum dated November 22, 1976, and is still in effect and subject to further orders of the Court. A certified copy of the Order and Memorandum Approving Plan of Rehabilitation and Settlement of Claims and Litigation entered by the Honorable Michael T. Dugan, II, Judge of the Marion County Superior Court, dated November 22, 1976 is attached hereto as Exhibit No. 1.

5. That this Court is obligated, pursuant to the provisions of Article IV of the United States Constitution, to give full faith and credit to the public acts, records and judicial proceedings of every other state. Therefore, jurisdiction over the parties and the subject matter of the subject action having been assumed by the courts of the State of Indiana, this Court has no jurisdiction or authority to proceed further in this action.

THIRD DEFENSE

That plaintiff has appeared voluntarily in the action referred to hereinabove thereby subjecting itself to the jurisdiction of the Superior Court of Marion County, Indiana. That by such appearance, plaintiff has waived its right to litigate any and all matters involving its relationship with, and matured or potential claims against defendant Underwriters National Assurance Company by means of collateral attack in the courts of North Carolina or elsewhere.

FOURTH DEFENSE

That by its appearance in the action pending in the Superior Court of Marion County, Indiana, plaintiff has acknowledged and acceded to the jurisdiction of said Court and its actions with respect to the property items and assets of defendant Underwriters National Assurance Company, and plaintiff is thereby estopped from attacking the jurisdiction, orders, and other actions of said Court and proceeding against this defendant in this action.

FIFTH DEFENSE

That the orders and proceedings in the Superior Court of Marion County, Indiana, involving the rights, claims and liabilities between plaintiff and defendant Underwriters National Assurance Company are *res judicata* as to all matters set forth in the complaint filed in this action. Specifically, the November 22, 1976 Order, attached hereto as Exhibit 1, sets forth in detail the method of

reimbursement for amounts paid by plaintiff on account of claims against defendant Underwriters National Assurance Company and plaintiff, as a party to said rehabilitation action in the Superior Court of Marion County, Indiana, is bound by said Order.

FOR A COUNTERCLAIM AGAINST PLAINTIFF, DEFENDANT UNDERWRITERS NATIONAL ASSURANCE COMPANY ALLEGES:

1. That plaintiff is not only a party to, but has and is actively participating in the action still pending in the Superior Court of Marion County, Indiana, referred to hereinabove, which said action is still open for supervision by the Court and further orders affecting the property and assets of this defendant.

2. That the Superior Court of Marion County, Indiana, is a Court of general jurisdiction, fully capable of granting any and all relief available to the plaintiff by reason of the matters and things stated in the Complaint, all of which was known to the plaintiff prior to the commencement of this action.

3. That the commencement of this action in the Superior Court of Wake County, North Carolina by plaintiff is a frivolous duplication intended for the purpose of harrassing this defendant and improperly attempting to interfere with the assets of Underwriters National Assurance Company which are subject to the jurisdiction, supervision and control of the Superior Court of Marion County, Indiana, in the proceeding therein pending.

4. That by reason of the frivolous and improper acts of plaintiff in commencing this action in the Wake County Superior Court, Underwriters National Assurance Company has been damaged by having to incur legal and administrative costs in defending the same and is entitled to recover such damages from the plaintiff in an amount to be determined by the Court.

WHEREFORE, having fully answered the Complaint, defendant Underwriters National Assurance Company prays the Court:

1. That plaintiff's action be dismissed.

2. That defendant Underwriters National Assurance Company recover from the plaintiff damages incurred by reason of the frivolous and improper acts of the plaintiff in commencing this action.

3. That the costs of this action be taxed against the plaintiff.

PURRINGTON, HATCH & McNAMARA, P.A.

/s/ A.L. Purrington, III

/s/ Edwin B. Hatch
605 Raleigh Building
P.O. Box 831
Raleigh, NC 27602
Telephone: (919) 828-7214

[Exhibit 1 omitted in printing]

14.

[In the Superior Court of Marion County, Indiana, Room No. 5]

[Title omitted in printing]

FILED JULY 13, 1978

PETITION FOR INSTRUCTIONS BY UNDERWRITERS NATIONAL ASSURANCE COMPANY

Underwriters National Assurance Company ("Underwriters") petitions the Court for instructions concerning: (1) the Return of Premium Rider ("RPR") death claim of the estate of United Kingdom policyowner George J. Kingsley; (2) the handling of funds received as a result of third party recoveries under part IX of the Plan of Rehabilitation ("Plan"); (3) the impact of the lawsuit filed against Underwriters by the North Carolina Life and Accident and Health Insurance Guaranty Association ("North Carolina Association") upon the obligations of Underwriters and of the North Carolina Association under the Court-approved contract between Underwriters and the North Carolina Association and under the orders of this Court; and (4) the requests received by Underwriters from various state insurance departments for a court order stating that the rehabilitation proceeding was terminated as of a certain date. Underwriters files this petition pursuant to paragraph (10) of the Court's final Order, dated November 22, 1976, which says in relevant part:

> "***The Court shall retain jurisdiction over the parties and over this rehabilitation proceeding on petition of any interested party or the Indiana Department of Insurance (a) to resolve all questions as to interpretation and implementation of the Plan and as to the application of the Plan to specific facts and

circumstances and (b) to modify, amend or supplement the Plan in any respect in the light of future developments. The Court shall also retain jurisdiction over the parties and over this rehabilitation proceeding during the implementation of the Plan to the extent necessary or appropriate to assure compliance with the provisions of the Plan and the Voting Trust and Depositary Agreement and to resolve all questions in that respect.***"

I

The RPR Claim of George J. Kingsley

1. The Plan and the Court's final Order make certain reductions in the amounts payable by Underwriters on account of any RPR on any policy written prior to rehabilitation. Generally, all RPR benefits are terminated (part III of the Plan) and RPR policyowners as of August 4, 1974, receive the RPR liquidated cash value (part IV), a Limited RPR (part XI), and a proportionate share of third party recoveries (part IX).

2. Part XII of the Plan says:

"UNAC has significant numbers of policyowners in Canada and the United Kingdom. The Department will submit the Rehabilitation Plan to foreign regulatory authorities, or take such other steps as the Department deems to be in the best interests of UNAC."

Paragraph (5) of the final Order says:

"UNAC and the Rehabilitator are authorized and directed to do all acts necessary or appropriate to cause to be implemented the provisions of the Plan and the Voting Trust and Depositary Agreement subject to the approval of the Court. To the extent that any provision of the Plan cannot be fully implemented because of the lack of approval of regulatory authorities in Canada or the United Kingdom, UNAC and the Rehabilitator are authorized and directed to

implement the provision to the extent possible at the time of termination of this rehabilitation proceeding. Without limiting the generality of the proceding sentence, UNAC is authorized and directed to make distributions under the Plan of liquidated cash values, after termination of this rehabilitation proceeding, based upon calculations which exclude from the assets of UNAC the fair market value in exchange dollars of assets on deposit in Canada and the United Kingdom. If UNAC believes that such distributions to policyowners in the United States or in Canada or in the United Kingdom should not be made until approval of regulatory authorities in Canada or the United Kingdom or until other provision is made for policies of Canadian or United Kingdom policyowners, then UNAC shall petition the Court for authority to delay such distributions."

3. On June 8, 1977, Underwriters filed with the Court a Petition for Instructions Concerning the Mailings Required by the Court's Final Order. As a part of that petition, Underwriters asked the Court to approve distributions under the Plan of liquidated cash values to United States and Canadian policyowners based upon calculations which excluded from the assets of Underwriters the fair market value in exchange dollars of assets on deposit in the United Kingdom. By Order dated June 14, 1977, the Court approved Underwriters' request. Subsequently, and as described in the Certificate of Compliance with Orders Concerning Mailing of the Final Order and Plan of Rehabilitation, filed on January 25, 1978, Underwriters made distributions under the Plan to United States and Canadian policyowners only, not to United Kingdom policyowners.

4. While Underwriters and its legal, accounting and actuarial counsel in the United Kingdom have taken steps toward a resolution of Underwriters' affairs in the United Kingdom, no resolution has as yet been reached and Underwriters does not know at present what the precise

response of United Kingdom regulatory authorities and/or United Kingdom courts will be to implementing the Plan in the United Kingdom. At the present time, Underwriters' actuaries in the United States and in the United Kingdom are attempting to agree on a determination of the "net domestic liabilities" of Underwriters on the United Kingdom policies as written, and that actuarial review should be concluded in 30 days. When it is concluded, Underwriters has been advised by its legal counsel in the United Kingdom that action may be taken in the United Kingdom courts to resolve the outstanding issues as to the future handling of Underwriters' United Kingdom business.

5. On March 13, 1978, United Kingdom policyowner George J. Kingsley died. Mr. Kingsley at the time of his death owned a disability income policy of Underwriters, No. E00970, which had an RPR attached. One of the provisions of the RPR was that upon the insured's death, Underwriters was obligated to pay a certain percentage of the premiums theretofore paid under the policy. If this matured RPR claim were honored, Underwriters would pay as a result of the RPR £1,179,60, or approximately $2250.00.

6. As of June 30, 1978, there were 920 policies in force in the United Kingdom, of which 907 had RPRs. The Kingsley claim is the first matured RPR claim on any policy written in the United Kingdom. Except for RPRs maturing as a result of deaths of the insureds, no other RPR will mature until 1980.

7. Underwriters believes that it should be authorized to pay the RPR claim of Mr. Kingsley's estate, despite the contrary provisions of the Plan, for two basic reasons. First, to refuse payment prior to the time that the Plan has been approved for implementation in the United Kingdom or some other compromise reached, may involve Underwriters in expensive litigation in the United Kingdom prior to the

time that Underwriters' actuarial review of the entire United Kingdom situation is complete. Until Underwriters has been advised by its professional consultants as to the best course of action to follow in the United Kingdom, Underwriters does not want to provoke premature Court action against it in the United Kingdom. Second, the cost to Underwriters (and therefore ultimately to its policyowners and shareholder) of opposing the claim would almost certainly be greater than the claim itself, and that cost cannot be justified at this time on the basis of principle. The only way that an existing United Kingdom policyowner could cause an RPR to mature prior to 1980 is for the policyowner to die. Thus Underwriters can pay the Kingsley claim, complete its actuarial and legal review, take appropriate action shortly thereafter based upon that thorough review, and be reasonably confident that the Kingsley payment will not result in a bad precedent in the United Kingdom because of the few RPR's that will mature prior to a final resolution.

WHEREFORE, Underwriters asks the Court to authorize Underwriters to pay the RPR claim of George J. Kingsley under United Kingdom Policy No. E00970 and of any other United Kingdom policyowner who dies prior to resolution of Underwriters' status in the United Kingdom.

II

Third Party Recoveries

8. Part IX of the Plan says in relevant part:

> "Any recovery from the defendants in the lawsuit now pending in the Superior Court of Hamilton County or any other recovery as a result of legal action or claims by the Department or UNAC after rehabilitation as based on liability incurred for acts or omissions prior to rehabilitation shall inure to the benefit of RPR policyowners as of August 4, 1974, in proportion to their payments under Part IV(B). UNAC will

maintain a list of those policyowners until all litigation has been concluded and all recoveries, less litigation costs, have been distributed to the policyowners."

9. Underwriters has incurred to date substantial litigation expenses including court costs and attorneys' fees, as a result of the pursuit of claims against the defendants in the Hamilton County litigation. Underwriters has had to pay those expenses as they were incurred. Underwriters has just received the first settlement recovery from the Hamilton County litigation as a result of the settlements approved by the Court in its Entry dated March 31, 1978, approving a dismissal of claims against certain defendants. The amount of the first settlement recovery is a small percentage of Underwriters' incurred litigation expenses.

10. Underwriters believes that part IX of the Plan should be clarified to permit Underwriters to apply the settlement recovery received as a result of the Court's Entry of March 31, 1978, and all other third party recoveries received hereafter, against Underwriters' incurred litigation expenses, as those recoveries are received by Underwriters. At the point that recoveries exceed incurred litigation expenses, Underwriters believes that the balance at any particular point in time should be retained in Underwriters' corporate account or in short-term securities for ultimate distribution under part IX of the Plan.

WHEREFORE, Underwriters asks the Court to authorize Underwriters to apply all third party recoveries, as received, against litigation costs associated with third party litigation, as incurred, and to retain in Underwriters' corporate account or in short-term securities the difference, if any, between the amount of any recoveries and the amount of incurred litigation costs at any particular point in time.

III

The Lawsuit Against Underwriters By the North Carolina Life and Accident and Health Insurance Guaranty Association

11. Part X(C) of the Plan says:

"On August 4, 1974, UNAC was licensed to do business in states which either had at that time or have subsequently enacted legislation providing for some form of life and/or health insurance guaranty association. While the legislation in each state differs particularly as to its applicability, the general purpose of such legislation is to protect the state's policyowners, subject to certain limitations, against failure in performance of contractual obligations due to the impairment of the insurer. To provide that protection, an association of insurers is created to ensure the payment of policy benefits and of continuation of coverages, and members of the association are subject to assessment to provide funds to carry out that purpose".

"The Rehabilitator understands that the guaranty associations in the eight states of Connecticut, Kansas, Montana, Nevada, New Hampshire, North Carolina, South Carolina and Vermont may have certain obligations to UNAC policyowners residing in their respective states on August 5, 1974. To the extent that any guaranty association, as a result of the rehabilitation proceeding, makes a payment to or on behalf of a UNAC policyowner, that policyowner's rights under the UNAC policy shall be deemed to be assigned to the guaranty association until such time as the guaranty association has been fully reimbursed. UNAC shall have no further obligation or liability to any guaranty association, other than the obligation to recognize as valid the assignment of the policyowner's rights to the guaranty association and to treat the guaranty association as it would have treated the policyowner; *provided, however,* if any guaranty

association makes any payment to or on behalf of any policyowner which is not fully reimbursed pursuant to the foregoing provisions, that association shall receive from UNAC each year until fully reimbursed a portion of UNAC's statutory net gain from operations after dividends to policyowners, federal income taxes and the payments to be made under Part XI, equal to the annual premium in force for basic coverage in the state of that association on August 5, 1974, divided by the total annual premiums in force for UNAC basic coverage on August 5, 1974.

12. By the Court's Order of June 14, 1977, Underwriters and the guaranty associations were authorized and directed to execute a Service Contract in substantially the form attached to a joint petition filed by Underwriters and the guaranty associations on June 8, 1977.

13. A copy of the Service Contract between Underwriters and the North Carolina Association is attached hereto as Exhibit A. That Service Contract is identical to all other Service Contracts between Underwriters and the guaranty associations with the exception of the insertion by the North Carolina Association of the last paragraph of the Service Contract on page 8.

14. Prior to executing the Service Contract with the North Carolina Association, Underwriters advised the North Carolina Association in writing that it was Underwriters' understanding that the inserted paragraph on the last page was designed to recite that neither Underwriters nor the North Carolina Association was waiving any claims that it may have in connection with North Carolina deposits and that it was Underwriters' position that the North Carolina Association has no claim to the deposits because of the contrary provisions of the Plan. Underwriters also advised the North Carolina Association that it was Underwriters' understanding that the last paragraph was inserted by the North Carolina Association simply to preserve whatever rights it may have had after

implementation of the Plan and that Underwriters was executing the Service Contract with that understanding.

15. On January 12, 1978, the North Carolina Association sued Underwriters in a North Carolina state court seeking to obtain for the benefit of North Carolina policyowners deposits of Underwriters in North Carolina totalling $100,000. A copy of the complaint is attached hereto as Exhibit B. Underwriters has defended the lawsuit by answering the North Carolina's Association complaint and filing a counterclaim against the North Carolina Association. A copy of Underwriters' answer and counterclaim is attached hereto as Exhibit C. The Commissioner of Insurance and the Treasurer of the State of North Carolina, co-defendants in the lawsuit, have filed a cross-claim against Underwriters, a copy of which is attached hereto as Exhibit D, and Underwriters has filed an answer thereto, a copy of which is attached hereto as Exhibit E.

16. Underwriters is ready to mail to the guaranty associations pursuant to the terms of the Service Contract, certain monies which the Service Contract provides are to be remitted quarterly. Were it not for the North Carolina Association's filing of a lawsuit against Underwriters asserting a claim to Underwriters' deposits in North Carolina, certain monies would be remitted to the North Carolina Association. However, Underwriters does not feel it should remit monies to the North Carolina Association if, as Underwriters believes, the Association's filing of the lawsuit constitutes a breach of the Service Contract and a violation of the Court's final Order and the Plan and other orders of this Court. Underwriters has been forced to employ attorneys in North Carolina and has incurred other additional legal expense as a result of the North Carolina Association's actions. Underwriters believes it should be permitted to withhold funds from the North Carolina Association to compensate it for these expenses.

WHEREFORE, Underwriters asks that the Court determine whether or not Underwriters should pay monies under the Service Contract to the North Carolina Association and, in accordance with that determination, direct appropriate action by Underwriters in accordance with the Court's final Order and the Plan.

IV

Termination of The Rehabilitation Proceeding

17. On February 4, 1977, pursuant to paragraph (7) of the final Order, the Trustees appointed by the Court to serve as Trustees under the Voting Trust and Depository Agreement elected the initial post-rehabilitation Board of Directors of Underwriters.

18. Paragraph (12) of the final Order states:

> "Upon election of the Board of Directors of UNAC as directed in paragraph (7), UNAC shall be released from rehabilitation, and UNAC shall be permitted to resume possession of its property and the conduct of its business pursuant to IC 27-1-4-2, and this rehabilitation proceeding shall be terminated, subject, however, to the continuing jurisdiction retained by the Court. Upon such termination the Rehabilitator shall no longer serve in such capacity, and the Indiana Department of Insurance shall have the same relationship to UNAC as to any other insurance company organized under the laws of this State, except as specifically provided in the Plan. The right of the Indiana Department of Insurance pursuant to part VIII of the Plan to maintain a representative at UNAC's office after termination of this proceeding shall not any duty or obligation of the Department or any officer, agent, or employee thereof to the State of Indiana or any other entity or person that does not exist apart from that provision of the Plan."

19. Requests have been received by Underwriters from various state insurance departments for a single court document confirming that the rehabilitation proceeding was terminated on a certain date and that Underwriters

has resumed possession of its property and the conduct of its business. An Order of this Court stating that the election of the initial post-rehabilitation Board of Directors of Underwriters took place on February 4, 1977, thus terminating the rehabilitation proceeding, would facilitate the administrative business of Underwriters by eliminating any question as to the precise date of termination of the rehabilitation proceeding and the current status of Underwriters as a privately operated stock insurance company.

WHEREFORE, Underwriters asks the Court to enter an Order stating that as of February 4, 1977: (1) Underwriters was released from rehabilitation and thereupon resumed possession of its property and the conduct of its business; (2) the rehabilitation proceeding has terminated, subject to the specific continuing jurisdiction retained by this Court in the final Order; and (3) the Rehabilitator of Underwriters no longer serves in such capacity and the Indiana Department of Insurance has the same relationship to Underwriters as to any other stock insurance company organized under the laws of this State, except as specifically provided in the Plan.

V

Notification of Interested Parties

20. The undersigned attorneys for Underwriters certify that on July 13, 1978, a copy of this Petition was mailed to each of the attorneys listed on the Schedule of Attorneys for Service of Papers, a copy of which is attached hereto as Exhibit F. Copies were also sent to the Indiana Department of Insurance, 509 State Office Building, Indianapolis, Indiana, 46204, and to opposing counsel in the North Carolina lawsuit, Arch T. Allen, III, Allen, Steed and Allen, P.A., P.O. Box 2058, Raleigh, North Carolina, 27602, and Rufus L. Edmisten and Isham B. Hudson, Jr., North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina, 27602.

21. Pursuant to orders of the Court dated June 6, 1977, and April 20, 1977, Indianapolis, Chicago, and Virginia class counsel for the policyowners were relieved of further responsibilities for representing any policyowner of Underwriters in this proceeding. While Underwriters believes that the Court and the Indiana Department of Insurance may sufficiently protect the interests of policyowners in this Petition and that the cost of mailing a notice of this Petition to each policyowner is not justified, Underwriters will notify whomever the Court directs of the filing of this Petition or take any other action the Court deems appropriate concerning the notification of interested parties.

BAKER & DANIELS

By /s/ Theodore R. Boehm

/s/ Charles T. Richardson

Attorneys for Underwriters National Assurance Company

810 Fletcher Trust Building
Indianapolis, Indiana 46204
317/636-4535

15.

[In The North Carolina Court of Justice
Superior Court Division, Wake County]

[Title omitted in printing]

NOTICE AND JOINT MOTION FOR SUMMARY JUDGMENT (Filed January 30, 1979)

TO ALL PARTIES, PLEASE TAKE NOTICE:

Pursuant to Rule 56 of the North Carolina Rules of Civil Procedure, Plaintiff, North Carolina Life and Accident and Health Insurance Guaranty Association ("Guaranty Association"), and Defendants, John Randolph Ingram, Commissioner of Insurance of the State of North Carolina ("Commissioner") and Harlan E. Boyles, Treasurer of the State of North Carolina ("Treasurer"), by and through their attorneys, give notice and move as follows:

1. Pursuant to an order of rehabilitation dated November 22, 1976 signed by the Honorable Michael T. Doogan, II, Judge, Marion County Superior Court, Marion County, Indiana, the Defendant, Underwriters National Assurance Company ("UNAC"), has defaulted upon certain contractual obligations owed by UNAC to North Carolina policyholders.

2. Pursuant to Section 58-155.72(4) of the North Carolina Life and Accident and Health Insurance Guaranty Association Act, the Guaranty Association has assumed liability for the contractual obligations owed by UNAC to North Carolina policyholders to the extent that UNAC has defaulted on those obligations.

3. As shown by the attached Affidavit of Bobby W. Gray, Deputy Commissioner of the North Carolina

Department of Insurance, and as further shown by a Memorandum of Law to be submitted at the time of the hearing on this motion for summary judgment, there exists no genuine issue of material fact and this matter is otherwise a proper subject for summary judgment.

WHEREFORE, the Plaintiff and the Defendants, Commissioner of Insurance and Treasurer, pray:

(1) That the Court enter a judgment declaring the Plaintiff's and Defendants' powers, rights, duties and responsibilities with respect to the deposit as made by UNAC and left in trust with the Commissioner.

(2) That the Court enter a judgment declaring the Plaintiff's right to have said deposits applied to the payment of the contractual obligations of UNAC to the residents of North Carolina.

(3) That, if the Court should find that said deposits should be liquidated for the benefit of the Guaranty Association and/or other North Carolina policyholders, that the Defendant, Commissioner of Insurance, be appointed liquidator to act pursuant to law and the orders of this Court.

(4) That the Court enter a judgment excluding UNAC from any interest in said deposits and securities, except any interest in such sums as might remain after the sale thereof, and after application of the proceeds in payment of the contractual obligations of UNAC.

(5) That the Court enter a judgment providing for its retention of jurisdiction and for the granting of such other necessary or proper relief, as requested in Plaintiff's first and second claims for relief and Defendants' counterclaim and crossclaim, and extending to all matters germane to the powers and duties of the parties.

(6) That the Court dismiss the counterclaim of Defendant, UNAC, against Plaintiff.

(7) For such further relief as the Court may deem just and proper.

Submitted this 30th day of January, 1979.

RUFUS L. EDMISTEN,
Attorney General

By /s/ Richard L. Griffin,
Assistant Attorney General

Attorney for
Defendants, John
Randolph Ingram,
Commissioner of
Insurance of the State
of North Carolina, and
Harlan E. Boyles,
Treasurer of the State
of North Carolina

Allen, Steed and Allen, P.A.
By /s/ William S. Patterson
By /s/ Charles D. Case

Attorneys for Plaintiff,
North Carolina Life and
Accident and Health
Insurance Guaranty
Association

16.

[In The North Carolina Court of Justice
Superior Court Division, Wake County]

[Title omitted in printing]

MOTION FOR SUMMARY JUDGMENT AND NOTICE OF HEARING (Filed March 12, 1979)

Underwriters National Assurance Company, a defendant herein, moves the Court pursuant to Rule 56 of the Rules of Civil Procedure for a summary judgment on the ground that there is no genuine issue as to any material fact as shown by the pleadings together with the affidavit attached hereto and certified copies of the pertinent regulations and statutes; and movant is entitled to judgment as a matter of law.

Take notice that Underwriters National Assurance Company will bring this motion on for hearing at 3:00 p.m. or as soon thereafter as the matter may be reached on March 19, 1979, before the Honorable James H. Pou Bailey, Judge Presiding, Courtroom Number 11, Wake County Courthouse, Raleigh, N.C.

This the 12th day of March, 1979.

PURRINGTON, HATCH &
McNAMARA, P.A.

BY /s/ Ashmead P. Pipkin
Attorney for Underwriters
National Assurance Company,
Defendant

OF COUNSEL:

Baker & Daniels
810 Fletcher Trust Building
Indianapolis, Indiana 46204
Telephone: (317) 636-4535